


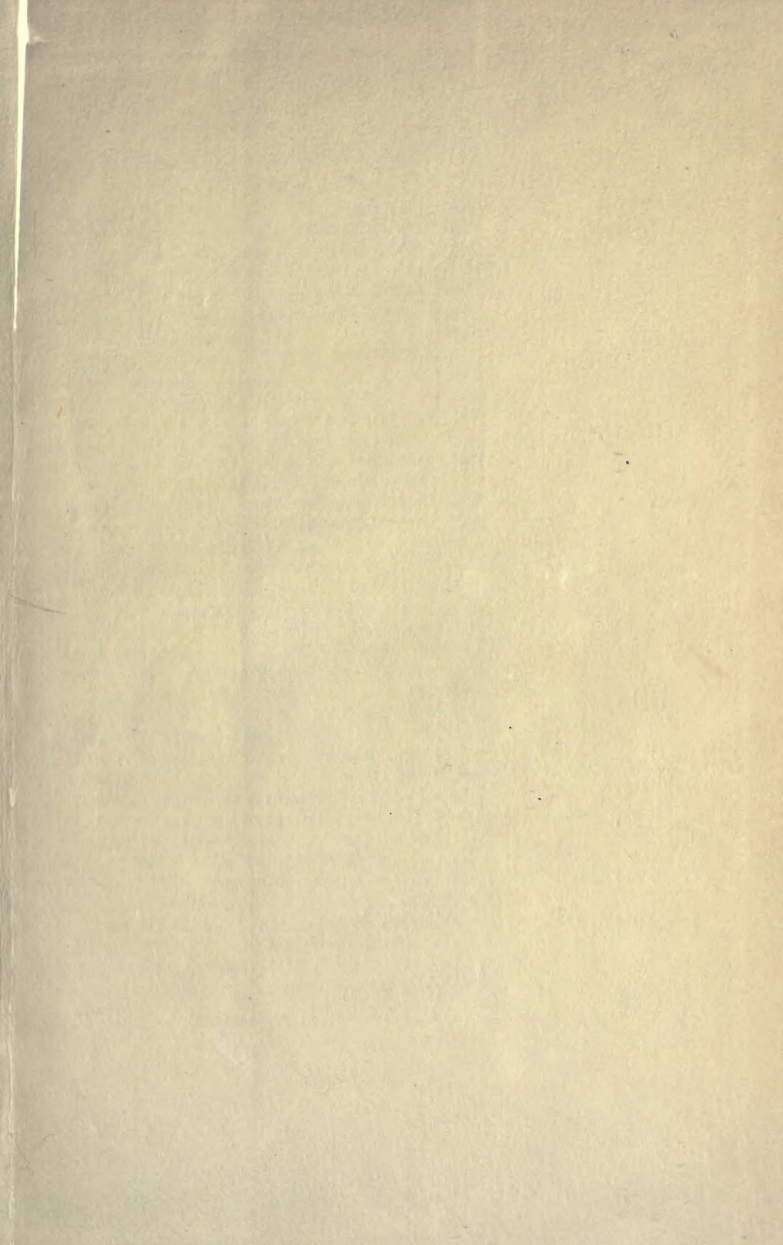
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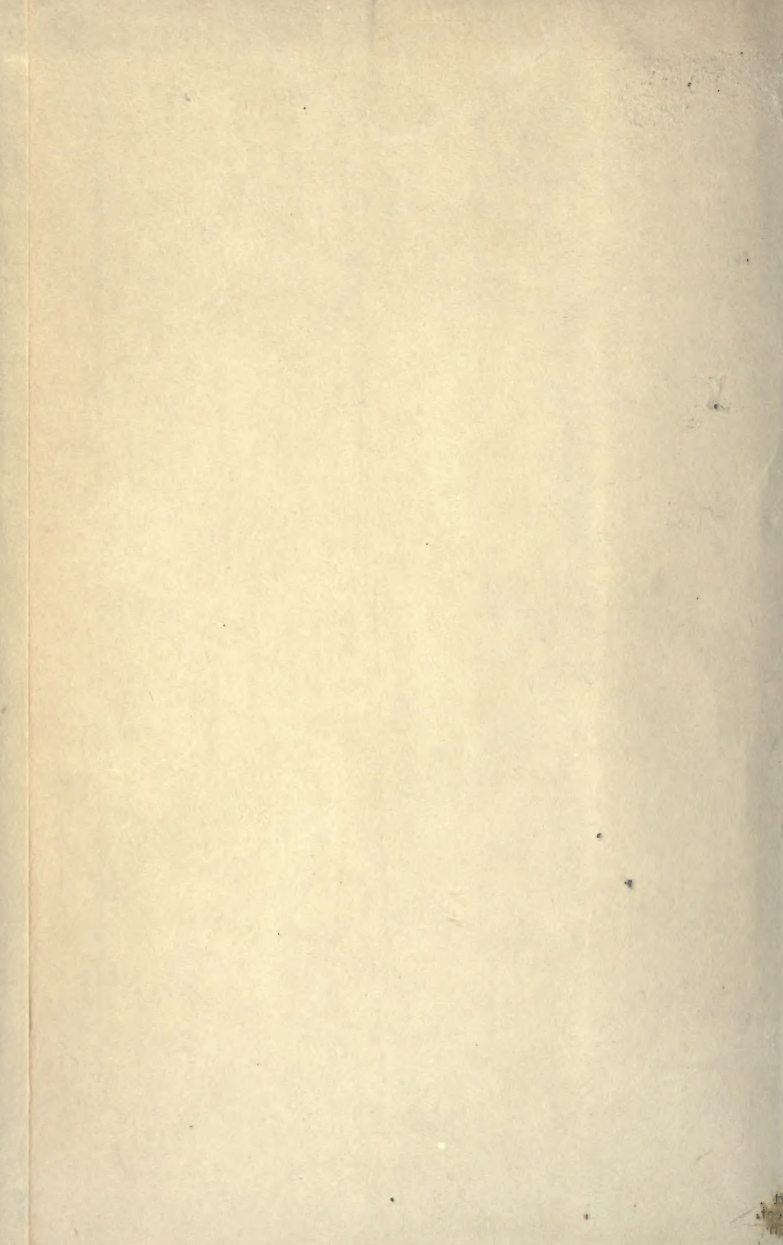


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ABDY.—On the 25th Sept., at Rottingdean, Brighton, JOHN ROBERT ABDY, LL.D., of 69, Cornwall-gardens, S.W., late Judge of County Courts and Recorder of Bedford, and formerly Regius Professor of Civil Law, Cambridge, aged 77.

SEPTEMBER 27, 1899.

## OBITUARY.

### MR. J. T. ABDY.

The death is recorded of Mr. John Thomas Abdy, late County Court Judge of Circuit 38, which embraces parts of Essex and Hertfordshire, with admiralty jurisdiction at Colchester and bankruptcy jurisdiction at Malmesbury, Colchester, Edmonton, and Hertford. Mr. Abdy was son of Lieutenant-Colonel James Nicholas Abdy, and was born on July 5, 1822. From the Proprietary School, Kensington, he went to Trinity Hall—foundation especially designed for the study of law and, like Caius having a long list of distinguished lawyers in its records—and stood alone in the First Class of the Civil Law Classes of 1844-45. In 1850 he was elected to a fellowship, and in the same year was called to the Bar by the Inner Temple. He joined the then First Circuit, but subsequently transferred his practice to the Norfolk Circuit. But he appears always to have been rather an academic than a practical lawyer, and in 1854 he was elected, in succession to the late Sir Henry Maine, Regius Professor of Civil Law in his University. It is a singular and perhaps unprecedented circumstance in University history for the same college to provide a professor during a period of two centuries. From 1866 to 1873, when Mr. Abdy resigned and was succeeded by Mr. E. C. Clark, of Trinity, the Professorship of Civil Law was held without interruption by 12 members of Trinity Hall. From 1858, when the old Civil Law Classes gave way to the Law Triposes, to 1872 inclusive, Mr. Abdy, in virtue of his office, was Senior Examiner, and after his retirement from the Professorship was an occasional examiner. In 1870 he was made Recorder of Bedford, and in the following year was promoted to the County Court Bench. He published in 1857 "An Historical Sketch of Civil Procedure among the Romans," and nine years later an edition of Kent's famous Commentary on International Law. In conjunction with Mr. Bryan Walker he also edited, translated, and annotated the Commentaries of Gaius and the Institutes of Justinian. Mr. Abdy resigned his Judgeship in 1893.

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# FEUDALISM.

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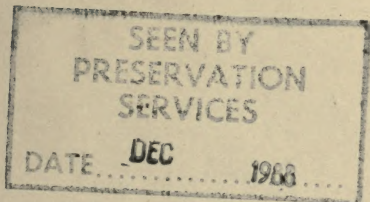
*ITS RISE, PROGRESS, AND CONSEQUENCES.*

Lectures delivered at Gresham College

*du*  
BY

J. T. ABDY, LL.D.,

*du*  
Judge of County Courts, and Law Lecturer at Gresham College;  
formerly Regius Professor of Laws in the University of Cambridge  
and Fellow of Trinity Hall.



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THE WARDENS AND COMMONALTY  
OF THE  
MYSTERY OF MERCERS  
OF THE  
CITY OF LONDON.



## PREFACE.

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THE greater part of this work was delivered in the shape of lectures at Gresham College. For that reason I have retained the lecture style of delivery. I should have hesitated to prepare them for publication, but I was pressed to do so by some of my audience. I have therefore ventured to put them together in the shape in which they now appear.

It was my intention, when first I thought of explaining the rise and progress of the customs, laws, and constitutions of England, to take as my starting-point the Norman Conquest.

I soon found, when I came to look into the subject, that it would be advisable to carry my hearers back to a much earlier period of time than that event, for the reasons I have given in an early part of this work. The title I have selected is, as the reader sees, "Feudalism: its Rise, Progress, and Consequences"; but the nature of the inquiry has led me on to the examination and explanation of earlier events than that remarkable institution.

I have dealt with the subject under four aspects of matter and time. In the first part, I have endeavoured to portray the conditions of social and political life between the fall of the Roman Empire and the settlement

of the Barbarian invaders in Europe. Next to this, I speak of Feudalism and its characteristics, the causes of its advent into the polity of Europe, its position with reference to the institutions which had preceded it, and its influence on the social life of Europe. Then I go on to the consideration of our own country, its early settlements, and its Teutonic immigrants; and I set out several of the Anglo-Saxon customs and laws that grew into shape, and were worked into the form which our Norman conquerors saw when they arrived here. In the last place I dwell on the Conquest itself, and what followed upon it.

As I specially stated to my audience, my great desire was to convey the best and largest information I could lay hold of on all these points, and therefore I looked about me for the soundest and most trustworthy authorities upon the topics I should have to deal with.

For the earlier portion of my narrative, I have made use of a work that to my mind is one well deserving of the notice of every student of the history of those times when the wave of Barbarism that had swept over Europe had almost destroyed every vestige of law and order, and had reduced social and political life to the verge of ruin.

I remember when first I read "*Les Essais sur l'Histoire de France*," how much I was impressed with the value of the work, and how strong a light M. Guizot seemed to me to have thrown on a period of time enveloped in gloom, and whose history was to be gathered from obscure annals, from rugged chronicles, and from old charters and documents written in language hard to interpret

owing to their crabbed style, and the old and almost forgotten terminology employed.

It struck me that an English version of these essays, wherein the profound learning displayed is as remarkable as the skill with which the narrative is set out, might be of service to the student of the early history of our European polity.

For this reason I have worked into that portion of this book no small amount of M. Guizot's treatise. Nor have I hesitated to add such other chapters of the essays as bear upon the Anglo-Norman Government and the political settlement of England following on the Conquest, in order that my readers may contrast the views of a learned and large-minded foreigner with those of our own best and ablest later historians.

Of those historians I have drawn extensively upon the treatises of three, whose authority in the matter of early English history stands at the highest point of fame, and whose learning and research, charm of style, and critical acumen, have made them pre-eminently our sure guides therein.

Bishop Stubbs and Professor Freeman are still with us, and we may hope to have from them continuations of those histories of our land which have done so much to give us new and true conceptions of the rise and progress of the English constitution from its first beginning. But Mr. Green is gone from us, and in his death we have to deplore the loss of one who, as a reviewer of his work, "History of the English People,"<sup>1</sup> has said with truth,

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<sup>1</sup> See *The Spectator* for March 9, 1888, p. 307.

did two things for English history: "he introduced a governing mind into that which had been a fortuitous concurrence of chaotic atoms; and further, he introduced a philosophic theory of national evolution into that which had been too often treated as a mere series of disconnected stories or anecdotes, more or less interesting, of kings, nobles, and archbishops."

For my own part, I know no books that for truthfulness in the story, for perfect arrangement of events, for tenderness of sentiment, for picturesque felicity of phrase, and for power of masterly combination of facts, as well as for acuteness of criticism, rival Mr. Green's "Making of England" and "Conquest of England."

To these two works I have made large reference, and from them I have drawn descriptions which I have preferred to put in Mr. Green's own words, knowing how poor would be any attempt of mine to set them out in my own language.

"Mr. Green," and I again quote his reviewer, "has breathed life into old documents and wove the old tales into a connected and interesting story of the development of the English race."

If, as is said in the same article, "the Bishop of Chester and Professor Freeman are masters at whose feet Mr. Green sat, whose teaching and whose inspirations he would have been the first to acknowledge," so I may say of myself, in this work I am sitting at the feet of all three of these distinguished writers. I acknowledge, *grato animo*, the value to me of their teachings and inspirations; and I most sincerely hope that the references I have so freely made to the writings of Bishop Stubbs, of Pro-

fessor Freeman, and of Mr. Green will send my readers to the works of those masters of the art of making the study of history not less agreeable than it is instructive.

I have now to express my thanks to the "Delegates of the Clarendon Press" for their kindness in allowing me to make use of "the Select Charters and other Illustrations of English Constitutional History from the earliest times to the reign of Edward the First," arranged and edited by William Stubbs, M.A., Regius Professor of History, and first published A.D. 1870. The value of this treatise will be readily acknowledged by all whose business it is to teach or lecture on the early history of our Constitution, and I well remember the emphatic terms of commendation employed by my friend Mr. Charles H. Pearson,<sup>1</sup> when in our walks together at Cambridge (where at the time he was acting as lecturer in history at Trinity College), he spoke of Professor Stubbs' book as one that threw more light on the subjects discussed in it than any he knew of, and that rendered the teacher's task a much easier one than was the case in earlier days.

I have also to record my thanks to the same distinguished body for allowing me to refer to and cite, where necessary, passages from Professor Freeman's "History of the Norman Conquest." I have dwelt upon the importance of this learned treatise in the text of my own book. As will be seen, I have had frequent reason

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<sup>1</sup> To Mr. Pearson's "History of England" (published by Messrs. Bell & Daldy, in two volumes, 1867) I have, as the reader will see, made frequent reference. I desire to express my warm acknowledgment of the value of a work to which I am largely indebted for information on the early history of our country.

to refer to it. Each time that I have done so I have been struck with the profundity of learning displayed in, and admired the charm of style that adds grace to, its pages.

My thanks are also due to my friends Messrs. Macmillan & Co., for the permission they have given me to use those two books of which I have already spoken, viz. Mr. Green's "Making of England" and "Conquest of England." I trust they will not think that I have abused the favour extended to me, and I also hope that they will find that I have carried out their wishes in carefully noting the chapters and pages from which my citations have been taken.

I am under no small obligation to the Worshipful Company of Mercers, not only for special favours received from them in connection with the publication of the present volume, but for frequent acts of kindness and good-will during my somewhat long connection with the office of which they are the patrons. I know well the interest they take in all matters connected with the advancement of education, whether general or special—an interest shown by deeds of generosity and munificence not incommensurate with the means at their disposal.

In course of preparation of this book, I found that without the help of a large and well-arranged library I should be at much disadvantage. Happily my own legal *Alma Mater* was at hand, and on the shelves of the library of the Inner Temple I found all I could possibly desire.

Were I asked to name a place in which the student of history can find readily, and without trouble, almost any book he may wish for, I should unhesitatingly say that

in the library of the Inner Temple his most learned researches can be supplied with ample material. For archæology, for history, for topography, the Inner Temple library is almost unrivalled. But to its noble collection of books on these and other subjects it adds the boon of a staff of attendants whose pleasure, quite as much as their duty, lies in helping the readers who throng its rooms.

I beg to thank my learned friend Mr. Pickering, and his kind and courteous assistants, for all the goodness they have displayed towards me in the course of my present work.

Those who like myself are under the necessity of appealing for help from time to time to the custodians of such a splendid collection of works as that I am now speaking of, will bear me out in these expressions of gratitude to the librarians of the Inner Temple.

And now, all that remains for me to say is, that if by good chance the present work is thought to offer any help to the student of our English customs, laws, and constitution, that will be owing to the authors from whose volumes so large a portion of it is taken.

Its merits, if it be thought to have any, will be theirs. Its shortcomings and defects will be my own. As I have said above, my sole wish has been to convey information to others. Should I succeed in so doing, I shall esteem myself fortunate.



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# FEUDALISM.

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## LECTURE I.

### *ROMAN LIFE.*

Object of the Course—Prefatory Note of the General Character of the Norman Invasion and its Effect upon England—Importance of the Main Subject of these Lectures, its Extent in respect of Time and of Locality—Causes of the Destruction of the Old Roman National Life in Europe—Reasons why the Inquiry should date from the Fall of the Roman Empire—Influence of Imperial Rome visible in the following Agencies: Corporate Municipal Life; Uniform Civil Legislation; Municipal Ecclesiastical Civilization; the Emphyteutic Tenure; Military Service in the Provinces; Relations of Patron and Client; General Civilization and Law—The Influence of the Roman Law on the Customary Rules of the Barbarian Invaders—Era of Theodosius the Great.

I HAVE promised to devote some of my lectures to the subject of Constitutional History.

In redemption of that promise, I propose to take the subject on hand now; and as it seems to me that an intelligent appreciation of our English Constitution is dependent upon a proper understanding of the formation of English social life, an inquiry into the early history of

that social life will, as I hope to show, not be without value.

As Mr. Freeman has said, in his admirable work on the Norman Conquest, that event is important, not as the beginning of English history, but as its chief turning-point. "It brought with it a most extensive foreign infusion, which affected our blood, our language, our laws, our arts. Still it was only an infusion; the older and stronger elements still survived, and in the long run made good their supremacy."<sup>1</sup>

What these older and stronger elements were it will be my business to explain, and what was the nature of the infusion I speak of I shall also explain; for this is clear, that if the earlier English history is important to the right understanding of the Conquest, it is no less important to exhibit what it was these Norman conquerors brought with them; and to do that properly, I must put before you the social life of the men whose infusion of language, laws, and arts so materially affected the condition of things in the country into which they came and in which they settled.

William the Conqueror, as we know, claimed to reign as the lawful successor of the kings of the English who reigned before him; he claimed to inherit their rights, and professed to govern according to their laws. But he brought with him customs and laws that, in time, altered the aspect of the earlier English customs and laws; and therefore if, on the one hand, I point out some of the

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<sup>1</sup> "History of the Norman Conquest of England," vol. i. ch. i. (Introduction) p. 1 (third edition, revised, 1877).

leading features of the earlier English life, on the other hand, it will be my business to account for the source from which these Norman customs and laws flowed.

And here just let me state what the character of the Norman Conquest was, and again I cite Mr. Freeman:—

(1) It was much less than a national migration; it was much more than a mere change of frontier or of dynasty.

(2) It was not such a change as when the first English conquerors slew, expelled, or enslaved the whole nation of the vanquished Britons. Nor was it such a change as when Goths or Burgundians sat down as a ruling people, preserving their own language and their own law, and leaving the language and laws of Rome to the vanquished Romans.”

What it did was this:—

“It brought with it, not only a new dynasty and a new nobility. It did not expel or transplant the English nation, or any part of it, but gradually deprived the leading men and families of England of their lands and offices, and thrust them down into a secondary position under alien intruders. It did not at once sweep away the old laws and liberties of the land; but it at once changed the manner and spirit of their administration and it opened the way for endless later changes in the laws themselves. It did not abolish the English language, but brought in a new language by its side, which for a while supplanted it as the language of polite intercourse, and which did not yield to the surviving elder tongue till it had affected it by the largest infusion that the vocabulary of one European

tongue ever received from another. The most important of the formal changes in legislation, in language, in the system of government, and in the tenure of land, were no immediate consequences of the conquest, no direct innovations of the reign of William. They were, no doubt, the developments of later times, when the Norman as well as the Englishman found himself under the yoke of a foreign master. But the reign of William paved the way for all the later changes that were to come, and the immediate changes which he himself wrought were after all great and weighty.”<sup>1</sup>

Yet the Norman customs and law did work a change of a most remarkable and decided character, and that is why I propose to exhibit this change in its proper detail. What I wish to show, and what I shall endeavour to show, is the character and conditions of life that the Norman invaders of England introduced; for as Mr. William Morris, in the first of his series of lectures, says: “William brought with him an army of feudal vassals, owing military service to him; he created a baronage. Then the struggle of monarchical bureaucracy began, and in the contest between the Court and the Church, the Church was in the earlier period usually on the popular side.”

My business, therefore, is to point out the progressive changes by which this feudal vassalage was created; how the Church acquired the power, which doubtless it did acquire, of influencing the struggles of the people for

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<sup>1</sup> “History of the Norman Conquest of England,” vol. i. ch. i. (Introduction), pp. 3, 4 and 5 (third edition, revised, 1877).

freedom ; and how the feudal institutions for a considerable time displaced the earlier English institutions.

To do this properly I must, as I have said, go back to a much earlier period of history than the Norman Conquest. I must show you what the state of Europe was at the fall of the Roman Empire ; what was the result of the establishment of the Franks in certain parts of Europe ; and what was the influence of Frankish laws and customs upon the Norman invaders of France, when, by the peace of Clair on Epte (A.D. 912), Rolf became the vassal of King Charles, receiving from him in pure allodial possession, *in alode et in fundo*, the lands granted to him, and though not bearing the title of king, yet holding as king the monarchy of the Norman land.

The subject in hand is an important one in respect of time and in respect of territory : it takes us back thirteen centuries ; it covers a large extent of ground, Italy and Gaul (*i.e.*, France), as well as our own land.

It is important also in another respect, because the history of the rise and progress of modern European social life is the history of civilization, as well as that of the constitution.

For what is civilization but the perfecting of civil life, the development of society properly so-called, of the relations of men among themselves ? And on what foundations does proper constitutional life rest save the right determination of the boundaries of the sovereign's prerogative, and the accurate definition by law of the peoples' liberty or power ?

If, then, I commence this account of our own social and political life with some remarks upon the utter

destruction of the old Roman national life and spirit in Europe, I shall, I think, be able to show sufficient reason.

Rome, as we all know, maintained its hold of power in Gaul down to the fifth century of the Christian era, and for many years from the date of the conquest of Britain by Julius Cæsar established its rule and its laws there. Yet neither in Gaul nor in Britain was that hold permanently retained; and so far as our own country is concerned, nothing is left to mark the Roman conquest save some few remains of roads, of old buildings, some infusion of Latin terms in our language, and some infusion of Roman law in our own system of jurisprudence.

I shall attempt to describe how this came to pass, what were the Saxon customs that superseded in England the Roman rules, and how the Norman Conquest of England displaced both the Roman and the Anglo-Saxon institutions.

And here let me say that I shall base this part of my subject very much on the writings of an eminent French historian, M. Guizot, whose "*History of Civilization*" and "*Essays on the History of France*" have thrown so much light on a subject that was not free from obscurity till he took it in hand; and if at the same time I take as my authorities Sir Francis Palgrave, Professor Freeman, and Bishop Stubbs, I shall be referring to authors than whom no better or abler can be found that I know of.

It may of course be asked (and it is not an unnatural query), Why, if the Roman conquest of Britain left so little to show for itself, so far as habit of life and local customs and institutions were concerned, should our attention be directed to the old Roman world?

My answer is, for the following reasons:—

First, in the story of social development at that period of time when Rome was supreme in the greater part of Europe we have the idea of corporate municipal life worked into shape. The government of Rome was the aggregate of institutions suited to a population confined within the walls of a city—in other words, of municipal institutions; and as with Rome in the early times, so with Italy,—what you find is a confederation of Latin towns.

At this period of the early life of Rome, as in the days of the Empire, there was no country life such as we understand the term. The proprietors of the lands were the inhabitants of the towns; they went out to superintend their country properties, taking with them a certain number of slaves; but inhabited country, in the proper sense of the term, did not exist. And so it was that the history of the conquest of the world by Rome is the history of the conquest and foundation of a great number of towns. In the later Imperial period, in Gaul and in Spain you find nothing but towns. Therefore what the social history of Rome exhibits is the non-existence of the country, the extreme preponderance of towns, and the municipal character strongly impressed upon them.

But then, secondly, in addition to the municipal system which Roman civilization has stamped upon later European civilization, another element is visible,—I mean a general and uniform civil legislation, and the idea of absolute power, of absolute rule. From the municipal system is derived the principle of freedom; from the absolute power of the imperial ruler that of order and subjection.

Then, thirdly, from the Roman Imperial legislation we

get another element of civilization, one that stands between their own municipal system and that of the Middle Ages, that which M. Guizot terms "the municipal ecclesiastical system;" for the preponderance of the clergy in the affairs of the city succeeded that of the old municipal magistrates and preceded the organization of the modern municipal corporation.<sup>1</sup>

The consequence of this upon the formation of modern social life was the introduction of a moral influence, the presence and maintenance of a higher law than that of mere brute force or absolute unrestrained rule, and the separation of the temporal and spiritual power. It was in effect the source of liberty of conscience based upon the principle that physical force should have neither right nor influence over conviction and over truth.

In the fourth place, some writers, notably Sir H. Maine, in his work on "Ancient Law," ascribe to the Roman rule of *emphyteusis* that double ownership of land which was afterwards visible in the Frankish and Lombardic nations, whereby the military service of their followers was secured by granting away portions of their military dominion, and allowing benefices to become hereditary. Sir Henry thinks, not without a fair show of reason, that these foreign invaders, by whom feudalism was founded, took as their model the terms on which the *agri limitrophi* were occupied by the veteran soldiers of the Roman army who were disposed along the line of the Rhine and

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<sup>1</sup> In proof of this see the passages cited by Guizot from the Codex Justin.—Guizot, "History of Civilization in Europe" (Bohn's edition), vol. i. pp. 36, 37.

the Danube, and by whom the frontiers of the empire were secured against its barbarian neighbours.

He also thinks that the duty of respect and gratitude to the feudal superior by the endowment of his daughter, the equipment of his son, by the liability to his guardianship of the vassal's son during minority, were literally borrowed from the relations of "patron" and "freedman" under Roman law.<sup>1</sup>

This contention, possible, and even probable, as it may be, is not free from doubt. Craig, in his "*Jus Feudale*," maintains strenuously that feudal institutions are entirely independent of Roman notions, and Mr. Hallam, in his work, "*Europe during the Middle Ages*," warns us against laying too much stress on seeming analogy, and hesitates to discover in the Roman relations of "patron" and "client," and in the tenure of the frontier lands, a complete analogy with the feudal tenure of lands and with feudal duties.

It is not my task to examine the question here at length; I may have an opportunity further on to revert to it again, when I trace the different stages of the feudal system of tenure from the Allodial and the Beneficiary down to that of Feuds. Still, as Mr. Hallam says with truth, "the preparatory steps in the constitutions of the declining empire are of considerable importance, not

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<sup>1</sup> "*Ancient Law*," ch. viii. pp. 302, 303 (ed. 1861). For a very interesting account of the Limitanean grants, and their probable influence on the barbarian conquerors of Europe, the reader is referred to Palgrave's "*Rise and Fall of the English Commonwealth*," vol. i. ch. xvii. pp. 494 *et seq.*

merely as analogies, but as predisposing circumstances, even germs to be subsequently developed.”<sup>1</sup>

The fifth and last reason for drawing attention to the old Roman world is derived from the undoubted influence of Roman civilization and Roman law upon the customs and life of the barbarian invaders of the Roman Empire.

If I were to speak of the toleration of Roman institutions shown by the barbarian invaders of Italy and Gaul (who by a strange perversion of terms styled themselves the guests of the Roman people), I should be using too mild a word. The dominant influence of Roman social life would, I think, be the correct expression. Look, for instance, at the “*Commonitorium Timotheo V. S. Comiti*”<sup>2</sup> (the mandatory letter of King Alaric to his comes), note the Roman term retained in later times in the title count, as the Roman term *dux* has been preserved in that of duke.<sup>3</sup> What do we find? The king’s deliberate declaration of the value of the Roman system of jurisprudence to the well-being of the community.

Examine the contents of this *Breviarium Alaricianum* and that of the *Lex Romana Burgundionum*; what do we find? A positive recognition of the social distinctions

<sup>1</sup> “Europe during the Middle Ages,” vol. i. ch. ii. part ii. p. 185.

<sup>2</sup> This “*Commonitorium*” will be found in the preface to the “*Codex Theodosianus*,” in the collection by G. Hugo (Berlin, 1815), styled “*Jus Civile Antejustinianeum*,” and in the second vol. of Savigny’s “*Geschichte des Römischen Rechts im Mittelalter*,” cap. vii. § 13. (There is a French translation of this work by M. Charles Guerioux, published in 1839.) See also “*History of Civilization*” (Bohn’s edition), vol. ii. lecture xi. p. 7.

<sup>3</sup> Cf. Ducange Glossary, under each word, *Comes* and *Dux*; and Appendix, see Note A.

of the Romans, *e.g.* the Roman Civitas and Latinitas, the power of the master over the slave, the Patria potestas, Guardianship, Forms of Marriage, etc. (though, by the way, no reference is made to or notice taken of patronal rights).

As to the direct influence of the Roman law, let me shortly point out where this is visible. Take, for example, the "Edict of Theodoric," the "Alaricianum Breviarium," and the "Lex Burgundionum," or "Papiani Responsa."

It is not within the scope of these lectures to dwell upon the incidents of Theodoric's reign, or on his character; those who wish to inform themselves on these points will find full information in the 39th chapter of Gibbon's "Decline and Fall of the Roman Empire." I would only note these words of Gibbon: "His reputation may repose with confidence in the visible peace and prosperity of a reign of thirty-three years, the unanimous esteem of his own times, and the memory of his wisdom and courage, his justice and humanity, which was deeply impressed on the minds of the Goths and Italians."

It was somewhere between the years A.D. 493 and A.D. 526 that his edict was promulgated, during which period he reigned from the Alps to the extremity of Calabria, adding also to his government Rhætia, Noricum, Dalmatia, and Pannonia, and establishing his authority from Sicily to the Danube, from Servia or Belgrade to the Atlantic.

The object of the edict, which was published at Rome, though Ravenna was the seat of the royal power, was to fuse into one homogeneous whole, as far as possible, the

political relations of the Romans and the Goths. It was an attempt to regulate on a common basis the social life of the natives and the new comers; and while, by its enactments, resting exclusively on the principles of Roman procedure, such international combination was protected, provision was properly made for unforeseen cases by allowing each set of people to refer to their own special laws, when such cases arose. Therefore, though as a general rule the edict was the primary system of law, particular Roman doctrines or Germanic customs might be appealed to. The sources of this edict were the Theodosian Code, the Theodosian and Post-Theodosian *Novellæ*, and the Codes of Gregory and Hermogenianus.

From the fragments of the edict that have come down to us, it appears that the work consisted of four parts. The first, in two books, is an epitome of Gaius's *Institutiones*, upon certain parts of the law relating to persons and that relating to things; the second part, termed "*Fragmentum Papiniani*," is on the subject of pacts (*i.e.*, agreements) between husband and wife; the third part is a transcript, in thirteen books, of the *Codex Gregorianus*, of which nine are lost; and the fourth part is an extract from the *Codex Hermogeniani*, of which only the fragmentary titles have survived.

The "*Breviarium Alaricianum*" was the enactment of Alaric, the king of the Wisigoths. His kingdom extended over a great part of southern Gaul and of Spain, and the royal city was Toulouse. The events of his reign, if one were discussing the history of our Teutonic conquerors, would present topics of no little importance, because it was then that the Frankish invasion of Gaul

settled the fate of that part of Enrope, and because, by the defeat and death of Alaric (A.D. 507) in the neighbourhood of Poitiers, the Gothic dynasty came to an end, and the first of the Merovingian kings, Clovis, firmly established his power in Gaul, founding an empire that has exercised no little influence on our own country.

The “*Breviarium Alaricianum*” deserves special notice for more reasons than one; first, because it shows the earnest desire of the Wisigothic king to avail himself of the civilizing advantages of the Roman law; next, because no ancient code has so successfully escaped the ravages of time; and lastly, because by it has been preserved and handed down to us a large and important part of the learning of the old Roman lawyer Paulus. This code, then, exhibits in a remarkable manner, what I have above stated, the direct and positive influence of Roman law upon barbaric customs.

As to the Burgundian Code,<sup>1</sup> whose object was to provide a proper set of legal rules for all that portion of the western part of Europe which was occupied by the Burgundian invaders, its very title attests the Romanizing influence that affected it. It was called the “*Lex Romana Burgundionum*,” and its contents will show that even in the matter of crimes and offences, where one would expect to find a large infusion of Germanic customary law, the spirit of Roman jurisprudence governs its principles and rules.

What, then, I have stated above I here repeat, that although the barbarian invaders of the Roman Empire

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<sup>1</sup> The date of its publication is somewhere about the year A.D. 517.

came as destroyers and remained as conquerors, so far from despising the institutions of the conquered people, their pleasure was to copy them,—and so far from destroying their laws, they took a pride in publishing them for the use and benefit of all the subject populations.

Now here it may be asked, Was there any codified system of Roman law which could serve them as models?

One there certainly was, and one from which they drew large stores, viz., the Theodosian Code and the Theodosian *Novellæ*.

If there is any one period of Roman history which, just before the fall of the empire in the West, could throw most light upon the events that preceded and, as it were, led to that fall, and at the same time would throw light upon the social life and institutions of Imperial Rome just prior to its final extinction, I should select the era of the great Theodosius and the later Theodosian Code.

Half a century before his reign, the new capital of Byzantium in the East had been founded, and not long before his accession to power the final division of the eastern and western kingdoms had been effected. He had witnessed the Gaulic irruption of the Alemanni, the fortification of the Rhine, the Burgundian attacks upon the Rhine frontier, the ravages of the sea coasts of Gaul and Britain by the Saxons, the attacks of the Picts and Saxons upon Britain, the irruption of the Huns into the Gothic settlements, and the invasion of the Goths upon the Roman provinces, and at his death the Roman domination had been preserved.

The events of his life and reign have this importance, so far as the history of European society is concerned,

that they are the beginning of the end of Roman power; and that, as the Barbarian codes show, it was through his laws, collected and codified by the younger Theodosius, that the first step towards civilization and improvement of habits of life and respect for law and government was made among the earliest Barbarian immigrants.

If I had time or opportunity to exhibit Roman life and Roman habits of life towards the close of the Imperial days, I know no better means of doing so than by a close examination of the Theodosian Code and Novellæ.

They describe the functions and duties of the higher officials. They give us the rules by which their composite municipal institutions were governed. They make careful provisions for the work of the treasury, of the mint, of the markets, of the tax collectors. They describe the method and arrangement of their military system, show how the limitanean allotments were protected, tell us how their public games were regulated; and lastly, show us how completely the Christian form of worship and Christian belief had destroyed the old Pagan cult. In short, the Theodosian code is the best picture that I know of Roman life just before the time when the Roman Empire of the world came to an end.

## LECTURE II.

### *THE FRANKISH INVASION.*

Destruction of National Spirit at the Fall of the Empire—This owing (1) to the Despotic Character of the Government; (2) to the Annihilation of the Middle Class; (3) to the Misery of the Inhabitants of the Towns and of the Agricultural Community—Sketch of the Roman Municipalities down to the Reign of Leo the Philosopher—Danger to the Municipalities from the Barbarian Invasions; from the Populace; and from the Army—The Privileged Classes and their Exemptions from Public Duties—Increasing Influence of the Clergy in the Municipalities and in the Rural Districts—General Condition of affairs at the time of the Conquest of Europe by the Barbarians—Consequences of the Conquest—Transition from Wandering Tribes to Proprietors of Land among the Barbarians—Influence of Land upon Status—Development of Royalty—Rise of a Territorial Aristocracy—Increasing Influence of the Clergy—The Franks, their Early History—Influence of Frankish Ideas on the Conquered Lands.

THE fall of the Roman Empire in the West presents a remarkable phenomenon. [Not only did the nation not sustain the Government in its contest with the Barbarians, but left to itself it attempted no resistance whatever.] Nay, more, during the long strife there is nothing to show the existence of a national spirit. The nation submitted to all the miseries of war, of pillage, and of famine, to a complete change of state, in silence, and apparently with indifference.

In the fifth century the remains of the Roman legions strove to resist the hordes of Barbarians by whom the immense territory of Rome was overrun. They strove in vain. These barbarian hordes seized the provinces into which they pressed. The Roman nation ceased to exist, and only one body of individuals appear as having any pretence to political life, viz. the bishops and the clergy.

Except for the fact of the survival of the Roman law, no one would imagine that a Roman population once occupied the soil. Yet there was a time when Gaul, Italy, and Spain were covered with towns once rich and populous. Civilization was developed among them in a remarkable manner. Roads, aqueducts, amphitheatres, schools were made, built, and established in all of them. Nothing was wanting to attest the wealthy condition of their inhabitants or to exhibit the extent of their power. But the invasions of the Barbarians destroyed all this wealth, dispersed the schools, and made a desert of the pleasant places. The very existence of the nation came to an end.

Should it be asked, How came all this to happen? an answer may be found in the following causes: the despotic character of the Imperial Government; the debasement of popular sentiment; and the profound apathy which had spread through all ranks.

But besides these there was another agency, still more powerful, and that was the dissolution, the disappearance, the destruction of the middle class in the Roman world. When the barbaric hordes poured into the Imperial provinces, this class no longer remained. With its disappearance the national spirit died out.

If we want to get a true idea of the conditions of social life in a civilized country, I take it that there are two classes towards whom our attention is naturally at once directed,—the inhabitants of the towns and the cultivating or agricultural class.

I shall speak as briefly as I can of these two classes under the Roman domination, because I think I shall be able to show that in spite of the destructive effect of Roman civilization on one of them, and the debasing disregard of Imperial Rome for the well-being of the other, an agency was at work which preserved the life and beneficially influenced for a time the condition of each, even as against the narrow individualism and the rapacious spirit of the Teutonic invaders of Italy and Gaul: I mean the agency of ecclesiastical power and authority. Let me then draw your attention to the state of things affecting each of these classes under Roman rule.

First as to the municipalities. The history of the municipal institutions in the Roman period of government divides itself into three epochs.

In the first, which embraces the hundred years that followed upon the establishment of the Empire, we find the municipal or corporate spirit firmly established; the importance of the Municipia, of the *Coloniæ*, and of the *Præfecturæ* recognised, and excellent regulations for their proper management sanctioned; but at the same time we find the fatal blot which disfigures the constitutional life of Rome: I mean the inclination to centralization, that later on became still more developed; and the separation between corporate interests and political interests that

was productive of so much mischief as time advanced. In the towns, no doubt, municipal interests and duties, properly so called, were protected, but all the higher range of political duties was transferred to Rome.

In the second epoch, down to the reign of Constantine, the severance of the political from the municipal privileges became still more marked, and what was worse, Rome absorbed everything; the leading members of the municipia flocked to Rome in order to share there either in the comitia, or in the different public functions and in the administration of public matters. Then, when the comitia were abolished, and when by this blow all free intervention in state affairs was abolished, neither at Rome nor away from Rome was any interest in political life left.

Still there was some compensation for the towns, for as the importance which Rome itself had hitherto offered to their leading citizens disappeared, the leading citizens no longer quitted those towns. Strangers to the government of the State, they remained in their own localities, and so the administration of the municipalities offered more attractions than before. The dignity of the *decurionatus* was enlarged, and was consequently in greater request; and in default of political rights and political guarantees, the rights and guarantees of the citizen class at home were more largely developed.

The third epoch, which extends from the reign of Constantine to the fall of the Empire in the West, and to the reign of Leo the Philosopher in the East (A.D. 806) marks the gradual decay and final destruction of municipal life. Two causes led to this: the ruin of the central

authority, after the time of Septimius Severus, in the Empire, and with its fall, and as a consequence, the ever increasing burdens and dangers cast upon the municipal authorities, and the growing power of that Christian society which was steadily progressing, and which eventually overpowered the old Pagan forms of worship.

At the same time there were three dangers ever present to the despotism of the Roman emperors: the Barbarians, whose incursions were constantly renewed, and who had either to be conquered or bought off; the Populace, whose growing numbers required food, amusement, and restraint; and the Army, the sole means of keeping these two bodies in restraint. To meet the demands that the exigencies of the times imposed, the towns were called upon to provide the means, and upon the decurions was thrown the labour of collecting and transmitting the immense sums that the central authorities required.

Time does not allow me to exhibit the history of the events that led to the destruction of corporate life in the Roman provincial towns. It is enough for me to say that whilst on the one hand the pernicious principle of allowing to the privileged classes (that is, to the senators, the officers of the palace, the clergy, the officials employed in the maintenance of order and of the execution of the laws, and the military class) exemption from the burdensome office of the decurionatus made the municipal offices sources of danger rather than of reward; on the other hand the separation between political interests and municipal interests, coming as it did upon the destruction of the middle class, evoked that utter feeling of apathy

which, as I have above mentioned, put an end to all national life and spirit.

Then this remarkable result followed, that the civil head of the municipium disappeared; the ecclesiastical authority took the place of the old civil authority; and the bishop became the natural chief, the real mayor of the borough. His election, and the part which the citizens took therein, became the important business in the towns, and thus it was that Roman customs and Roman corporate life were preserved for a while by the clergy.

As I have already stated, between the old municipal regulations of Rome and the municipal regulations of the burghers of the Middle Ages, the municipal rule of the ecclesiastical body intervened. The conversion of the Frankish kings to the Christian faith (as I shall show by-and-by) served to enlarge the influence thus obtained by the clergy, and this so far as corporate life and spirit are concerned was not unproductive of benefit to the progress of civilization and to the settlement of society in Europe.

Now if this influence was beneficial in respect of municipal institutions, it was equally so in respect of the agricultural portion of the community; and this I shall endeavour to make clear, first by exhibiting to you the condition of the cultivating portion of the community under the Roman rule, and then by pointing out what were the ameliorations in their condition effected by the clergy.

The rural districts played a very small part in Roman society, the preponderance of the cities was immense,

and but for the efforts of the ecclesiastics to maintain and improve their lot, the rural inhabitants might have died out altogether.

Under the Roman rule the special class inhabiting the rural districts and devoting themselves to agricultural labours were called *coloni*, *rustici*, *originarii*, *adscripti*, *inquilini*, *tributarii*, *censiti*; and their condition was this: (1) they were not slaves; (2) they could contract legal marriages; (3) they could serve in the Roman armies; (4) they could hold property. But then their liberty was confined to very narrow limits, and was subject to very harsh conditions. (1) They were attached to the estates, *servi terræ*, *glebæ inhærentes*; under no pretext could they quit the domain to which they belonged, and if they did make their escape, the proprietor had a right to claim them wherever he found them. (2) Like slaves they were subject to corporal punishment, not so frequently as slaves, but in certain cases and to certain punishments from which freemen were exempt. (3) Although they could hold property, that property was not complete nor truly independent. They enjoyed it at their will, they transmitted it to their family; but they were forbidden from alienating it without their master's consent.<sup>1</sup>

On the other hand they possessed, as a sort of compensation for their hard condition, some advantages. I will mention two: (1) The proprietors could not separate them from the domain; they could only be sold with the estate, and the estate could not be sold without them.

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<sup>1</sup> Cf. Cod. Theod., lib. v. (*Epit.*); Titles ix. x. xi.

(2) The rent which they paid the proprietor of the soil (a rent almost always paid in kind, and called *reditus*, *annuæ functiones*) could not in any case be raised, it was always to remain the same, as fixed by ancient customs and independent of the will of the proprietors.

By the first, as you may easily see, their security, if not their liberty, was guaranteed.

By the second, the idea of an immutable land tax (one of the most efficacious causes of the agricultural prosperity of a country) was created, and if other circumstances had not diminished its benefits in the Roman Empire, the evils of the condition of the *coloni* would to some extent have been counter-balanced by it; but, unfortunately, in addition to this fixed rent which they had to pay to the proprietors of the soil, they were subjected to a less fixed and more onerous tax.

There were two great contributions payable to the imperial treasury: a land contribution by the proprietors, and a personal contribution, or capitation tax, by all the inhabitants of the territory. This capitation tax was charged upon the proprietors in the first instance, but they wrung it out of the cultivators. It was always increasing, and was a source of constant vexation towards the labourers. It destroyed, to a great extent, the benefit derivable from the exaction of a fixed and ascertained rent, and hence with other causes came that decline of the agricultural population which preceded the invasion of the Barbarians and facilitated its success.

At the period, then, of the conquest by the Barbarians and when they had firmly established themselves on Roman territory, they found almost all the rural popu-

lation reduced to a condition little better than that of bond labourers. At the same time the Roman Church possessed considerable territorial property, and towards the improvement of the ordinary cultivators' lot, as well as towards the amelioration of the condition of their own labourers, the efforts of the ecclesiastical proprietors were assiduously directed.<sup>1</sup>

Well, then, at the fall of the Empire, what did the barbarian invaders of Europe find? They found, it is true, an imperial head of the Empire, but one whose power was almost nil, and whose authority was utterly despised; they found a people without national feeling, ignorant of national sentiment, and reduced to a state of utter

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<sup>1</sup> In proof of this read the letter addressed by Gregory the Great (A.D. 590-604) to the Sub-Deacon Peter, the officer charged with the administration of the property of the Church in Sicily. See Guizot's "History of Civilization in France," vol. iii. p. 136, translated by Wm. Hazlitt (Bohn's edition, 1846); and at p. 147 of same volume, the Ordonnance of Louis le Gros on the demand of Thibault, Abbot of Saint Pierre des Fossés.

"We may rejoice to know and to acknowledge," says Sir James Stephen, in his "Lectures on the History of France" (vol. i. lect. i. p. 37), "that in Gaul the early Church was the one great antagonist of the wrongs which were then done upon the earth; that she narrowed the range of fiscal tyranny; that she mitigated the overwhelming poverty of the people; that she promoted the accumulation of capital; that she contributed to the restoration of agriculture; that she balanced and held in full check the imperial despotism; and that she revived within herself the remembrance and the use of the great franchise of popular election." Nothing truer than what is here stated. But I shall have to advert to this particular subject again, and to notice somewhat in detail the rise of the clergy to power and influence, political as well as social, the causes therefor, and the special consequences resulting therefrom.



apathy—a nation composed of a privileged class and of an impoverished lower class, the middle class no longer existing; they found towns governed by heads and possessed of regulations, but pauperised by the exactions of the imperial city; they also found a powerful, vigorous, and well trained body of ecclesiastics, into whose hands had fallen the real direction of corporate business; moreover, they found an agricultural population ground down by the exactions of the proprietors under whom they worked, and destitute of any notion of freedom.

Still, they did find a remnant of municipal life; and in spite of what more recent writers are inclined to hold, viz., that modern corporate life owes very little to Roman customs and law, I venture to maintain that the idea of municipal institutions not only is of Roman origin, but is largely influenced by the old Roman spirit that was caught and worked upon by the barbarian invaders of Italy and Gaul.

Further, I hold that the enforced connection of the agricultural labourer with the land on which he was born (and this, as we know, reappeared as one of the peculiarities of the feudal notions) is traceable to the institutions of Imperial Rome.

I now go on to show the effect of the barbarian invasion and settlement upon Europe in respect of social life and constitutional ideas.

One consequence of the invasions of the barbarian hordes by which the Roman Empire was overrun was to put an end to all regular, habitual, and easy intercourse between the various parts of the territory, and to all security, all hope of comfort, in the future. In Gaul

Roman society was destroyed; the ties by which Rome had been enabled to combine together the various parts of the Roman world were loosened; that great system of administration, of imposts, of recruiting, of public works, of roads, was overthrown. What remained was nothing save the wreck of municipal institutions.

Under the Roman imperial administration the governors of provinces, the consuls, the presidents fill the scene, and reappear in the laws and in the history of Rome.

In the sixth century, though the Roman titles of duke, count, or præfect survived, their power and duties were of a different character.<sup>1</sup> The old separation between the civil and military professions vanished, and under the duke, count, or præfect, the command of the troops and the administration of justice were united. Thus the towns existed, but the rural districts became the prey of the Barbarians. It was there they established themselves with their men; there they introduced new institutions and a new organization.

In the ancient German communities two social conditions are visible: one, that of the society or tribe, with a decided tendency to sedentary habits, and existing upon a limited territory cultivated by means of labourers and slaves; the other, that of the warfaring horde grouped round some famous chief, and leading a wandering life.

When a tribe small in number, as were all the German tribes, occupied a limited territory; when each head of a family was established upon his domain in the midst of

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<sup>1</sup> See Appendix, Note A.

the people, the social organization continued for a time,—the assembly of proprietors, of heads of families, decided upon all matters, each tribe had its own assembly, justice was dispensed by the freemen themselves under the direction of the older members, and so in time a kind of public polity arose between the confederate tribes. This is the form of free institutions met with in the infancy of nations.

The organization of the warfaring band was different. Another principle is visible here, that of the patron, of the chief, of aristocratic clientship and military subordination.

The German warfaring band, therefore, contained a political element not possessed by the tribe, viz., arbitrary power and enforced obedience; and this is an influence that prevails in warlike bodies with more force than in communities that do not recognise war as their chief and dominating idea. At the same time the spirit of freedom thereby engendered was great. No man engaged himself against his will. The warriors chose their chief and his companions, but undertook nothing unless he had given his own free will to the adventure.

Nor was the inequality between the chiefs and their men of large proportions. In fact it was little more than the natural inequality arising from superior strength, skill, or courage. Although the chief had the biggest share of the booty, though he possessed more horses and more arms, he was not so far above his companions in wealth as to be able to insist upon their attendance without their own consent. Each warrior entered into the warlike association with his strength and courage differ-

ing very little from the others, and at liberty to leave when he pleased.

Now the characteristic fact, the great result of the invasion as regards the Germans, was their change to the condition of proprietors, the cessation of the wandering life, and the definitive establishment of the agricultural life; and the consequence of this as regards the warfaring band or tribe was as follows.

When the tribe was transplanted to Gaul, the habitations were further dispersed. The chiefs of families established themselves at a greater distance from one another; they occupied vast domains; their houses afterwards became castles; the villages which were grouped around them were no longer peopled with inhabitants who were free, who were their equals, but with labourers attached to their lands. Thus the tribe became dissolved by the very fact of its new establishment.

The effect upon its institutions was this: the assembly of the freemen was now got together with greater difficulty. So long as they had lived near one another, there was no need of any pressure or persuasion in order to induce the members to meet and discuss their affairs in common. But when a population is scattered, in order that the principles and forms of free institutions may be continued a great social development is necessarily implied; riches, intelligence, many things, in fact, become factors which hitherto had been wanting to a rough German horde transported to a territory far more extensive than what it had ever before occupied.

When once the tribe was established in Gaul, the assemblies of the freemen became less frequent. So that

in the middle of the eighth century, we find instead of the old weekly and monthly gatherings in each division, but three assemblies in the year, and these not regularly kept.

In the more primitive times when these assemblies were frequent, the freemen, under the name of *Rachimburgi*, *Ahrimanni*, *Boni homines*,<sup>1</sup> decided upon the affairs of the tribe; but when the attendance became infrequent or neglected, it was necessary on urgent occasions to supply the places of these earlier personages; hence we find the freemen replaced in judicial functions by permanent judges. Thus the *scabini*, or sheriffs, of *Charlemagne*, became regular judges. In each county five, seven, or nine freemen were appointed by the Count, or by the other local magistrates, whose duty it was to present themselves at the assembly of the county to decide upon causes. Hence the primitive institutions ceased to maintain their old influence, and the judicial power passed from the people to the magistrates.

There was another cause which materially affected the condition of life and society at the period I am now speaking of, and one which I shall show by-and-by introduced a new set of principles, changing the legal idea of status from that of the person to that of the land, and eventually producing that important element of feudal life, the attachment to the king or great chiefs of their men by the "fees" distributed to them; I refer to the parcelling out of lands.

Consequent upon this three great facts are visible. First, a tendency to the development of royalty. Nar-

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<sup>1</sup> See Appendix, Note B.

row and crude in the commencement, the kingly office became less warlike and more religious and more political than it had been. So that eventually we find it assuming the character of imperial polity.

Second, the rise of a territorial aristocracy. For from allodial property the tendency was to a fixed and permanent settlement, and to the introduction of the notion of hereditary succession.

Third, the increasing influence of the Church and of the Clergy; who from being at the outset only the counsellors of the barbaric kings, gradually became the magistrates and patrons of the still surviving municipality. Moreover, the clergy were established as great proprietors, entering into that hierarchical organization of manorial property which, comparatively small at first, afterwards occupied a considerable space in the social order.

Such then, briefly stated, was the condition of things which appeared in a large part of the old Roman imperial dominion after the fall of the Empire.

I propose now to give a short account of the people and the leading men who played the chief part in this history. I shall confine my remarks to the occupation of Gaul by the Franks.

The Franks, or Free-men, were a German race. They appear for the first time in history about the year A.D. 240. They were a collection of tribes—Chauci, Ansibarii, Cherusci, Chamavi, and Franci—who, occupying at the earliest period of their history territory on the right bank of the Rhine, pressed into Gaul from time to time.<sup>1</sup>

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<sup>1</sup> In an ancient chart or itinerary of the Roman Empire, drawn

Some of these tribes, under the name of Ripuarii, obtained an establishment along the Rhine, where they were tolerated as defenders of the frontiers of the Empire in that quarter. Others, under the name of Lœti, after some period of service in the Roman army, received allotments of land in the interior of Gaul. Others again wandered at will over the country, stopping in any district that seized their fancy, and taking possession of a depopulated town or a deserted portion of the country. There they deposited their booty and cultivated the surrounding lands with their slave gangs. Eventually they became inhabitants of Gaul without ceasing to be barbarians.

These tribes, few in number, and maintaining no settled intercourse among themselves, preserved their original customs and selected their own chiefs. —

They recognised with a half contemptuous indifference the insignificant claim of suzerainty of the Emperors, by whom their chiefs were invested with a title that, if it slightly admitted the superiority of the imperial authority from whom it was received, gave the recipients themselves some importance in their own eyes. So they were called *Comites*, *Duces*, *Magistri Militiæ*;<sup>1</sup> and so the Roman Empire nominally prolonged its existence in the places which these Barbarians occupied, and which they retained as the real masters of the soil and of the inhabitants.

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up apparently in the reign of Theodosius the Great, or in that of Honorius, the territory on the right bank of the Rhine is called *Francia* (Guizot, "*Essais sur l'Histoire de France*, II<sup>e</sup>. essai, p. 47, note 1; tenth edition, 1860). See also Gibbon's "*Decline and Fall*," ch. x.

<sup>1</sup> See Appendix, Note A.

In process of time, as their numbers increased, their chiefs assumed an importance warranted by the situation of affairs. The imperial authority was quietly but completely set aside, and thus it came to pass that the leaders of the various tribes looked on themselves and were recognised as the kings of the districts occupied by them. Gregory of Tours, speaks of Syagrius as King of the Romans, Clovis as King of the Franks, Ragnachaire of Cambray, Sigebert of Cologne.

Towards the end of the fifth century Clovis makes his appearance.<sup>1</sup> He succeeded his father Childeric as head of the Frankish population quartered in and about Tournai, and by him the Frankish monarchy was established.

Clovis was one of those men who seem born for great deeds and to make history. A barbarian in the midst of barbarians, he was endowed with superior faculties, and with that activity which accompanies them. A man whom nothing satisfies or wearies, who finds in rest and repose only impatience and wearisomeness, ever longing for energetic action, ever disdainful of control; such men as he are not to be stayed in their enterprises or balked in their resolutions by a crime, an obstacle, or a danger. This is the clue to the constant wars in which Clovis engaged, and this was the secret of his success,—a success which raised him from the position of head of a few thousand warriors to that of founder of the Frankish

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<sup>1</sup> His first victory over the Burgundians under Gundobald, between Langres and Dijon, was in A.D. 500. See for the events of this period, and for a full account of Clovis, Gibbon's "Decline and Fall," ch. xxxviii.

domination over all the neighbouring tribes and petty kingdoms, and founder, too, of the Merovingian dynasty. Such was Clovis, and such was the position he attained by force of superior will and invincible activity of mind.

Let me now point out what was the special character that the substitution of German life for the old Roman life impressed upon Europe.

It was the sentiment of personal independence; a love of liberty displaying itself at all risks, and resolute in the acquisition and maintenance of it. This was a sentiment unknown to the Roman or to the Christian society. It was a sentiment which was brought in by the Frankish conquerors of Gaul. It stirred into glow the decaying embers of civilization, and produced results that have been felt in a material degree in our own country under the influence of our Norman conquerors.

Again, to the Franks Europe owes the notion of military clientship, the bond which established itself between individuals, and which, without destroying the liberty of each individual or the equality existing among them, gave birth to that aristocratical organization which afterwards expanded into feudalism. The development of these characteristics, the development of a still more important element in the proper settlement and improvement of society, were worked out by a far greater mind and a far more sagacious monarch than Clovis. I mean Charlemagne.

## LECTURE III.

### THE SETTLEMENT OF THE FRANKS.

The Early Social Organization of the German Tribes down to the time of Clovis—The Classification of the Members of the German Community adverted to—Reasons for the Substitution of the Carlovingian for the Merovingian Dynasty—Chief Cause of the Fall of the Merovingian Kings owing to the Constant Divisions of Lands—Neustria and Austrasia—Rise of the Mayors of the Palace—The Era of Charlemagne—Splendour of his Reign—His Social and Legal Reforms—His Reign Marks the Birth of Modern Social Life—Its Influence on the Norman Invaders of Europe, and through them on England.

I CLOSED my last lecture with the name of the great Emperor Charlemagne; but before I speak of the influence exerted by him upon the history of European life, I will say a few words about the social organization of the German tribes prior to and at the time of Clovis.

First we have the nation, composed of a collective body of freemen,<sup>1</sup> in whom resided the sovereignty. Secondly, we find the division of the territory into cantons, with close relations existing between all of them, and in each canton the freemen forming the political organization.

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<sup>1</sup> These freemen are spoken of under different names. Among the Lombards they are called Ahrimans, Ehrimans, Hermans; among the Franks Rachimburi, Rathimburi, Regimburi. The Latin equivalent for all of them was *Boni homines*. See Appendix, Note B.

Next, we find every canton governed by a comes or count, invested with military power and with civil jurisdiction, and lieutenants acting under and obeying the orders of the comes, and supplementing his various duties. Lastly, we find the comes, or his lieutenant, presiding over the tribunals of justice, but without any deliberative voice, for the decision of the matter immediately before the tribunal belonged to the freemen of the canton, who were called together sometimes *en masse* and sometimes individually.<sup>1</sup>

Then, as to the old Germanic Constitution, that is, prior to the time of Clovis: (1) there was a superior or noble class, composed of the Rach or Rek,<sup>2</sup> and the leading men of the state. (2) This class of nobles (becoming in time hereditary) formed eventually a separate body, but without any special preponderance in the government or in the administration of justice; for the nobles (whose distinction was but a personal one) were simply individual members in the national and judicial assemblies. (3) Later on it is true royalty was introduced, but prior to that institution the dux or duke was the temporary head or chief in warlike expeditions; his functions ceased with the war, and under him were counts, who were commanders of the bands or regiments

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<sup>1</sup> This was one of Charlemagne's great alterations, appearing in the establishment of the Scabini or Echevins. For explanations of the terms Comes, Dux, Scabini, and Echevin, see Appendix, Notes A and C.

<sup>2</sup> Hence the Rachimburgi. Rach, probably from the Teutonic word "rek," meaning great, powerful. See Savigny, "Geschte. des Rom. Recht," i. ch. iv. § 64; and Appendix, Note B.

of warriors. In course of time these duces or dukes became, by nomination, governors of provinces; and then, by a gradual process not easy to trace, the union of civil and warlike duties and functions took effect; and so we find the duke and count merged in one dignity. Finally, when the Frankish domination was firmly established, we have the duke elevated to the dignity of king; king, that is, in relation to the conquered inhabitants, but only vassal in relation to some more powerful individual.

From this review of the social organization of the barbarian invaders of Gaul, I proceed to another topic deserving notice, viz., the classification of the members of the community.

Besides the chief, we meet with the superior class, viz., the Leudes, the Antrustions or Fideles,<sup>1</sup> the Clergy, the Enfranchised class, and the Slaves; but before I speak of them, there are two other remarkable features of the new condition of things consequent upon the introduction of the Teutonic settlement to which I shall have to advert. I mean the important influence of land upon the status of the individual, and the weregild, that is, the composition or money payment that the slayer of a man had to make to the family of the slain.

Of each of these I shall speak hereafter at some little length, because each of them marks the special nature of the change in the habits and customs of society, and because the influence of land upon the status of the individual is one of the remarkable features of a new set of ideas which, destroying the old Roman notion of the

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<sup>1</sup> For the explanation of these terms see Appendix, Notes C and D.

importance of the family, eventually led to the establishment of those feudal customs that kept a strong hold on the laws and customs of our own country as well as of other parts of Europe.

I defer, however, my explanation of these matters, in order to finish the history of the changes in the Frankish land that led to the establishment of the power of Charlemagne and the settlement of society resulting from his domination. That is to say, the substitution of the Carlovingian dynasty in place of the long-haired Merovingian kings.

It was a long-established belief that the fall of the Merovingian race was owing to the utter feebleness and inefficiency of a succession of weak kings, and to the ambition of Pepin le Bref; and to explain this some writers have fancied that the cause for their overthrow by the mayors of the palace was traceable to the fact that these personages, becoming by degrees chiefs of that aristocracy of great proprietors which on the one hand conquest, and on the other the benefices had created, were enabled, by dint of the influence and power which they acquired, to wage a successful contest with royalty, and eventually (between the seventh and the first half of the eighth century) to overthrow the dynasty under which they had obtained their hold of office.

Others have thought that the power of the kings and that of the mayors of the palace were gradually but steadily growing side by side, until the elevation of Pepin to the dignity of mayor placed in office a man of vigour and boldness sufficient to produce the definitive victory of the official over the king.

But the true nature of the two revolutions which overthrew, one the descendants of Clovis, the other that of Charlemagne, is to be found in events of another date than those just mentioned.

Childeric III. was not the only inert and feeble king who found himself under the influence of an ambitious mayor of the palace. Nor was the power of these mayors greater in the hands of Pepin le Bref than it had been under those of his predecessors, of Herstall, or of Ebroin, or of Grimoald. The contest between the great proprietors and the kings had been going on during the seventh century without immediately producing the fall of the Merovingian dynasty.

These and other causes of the ultimate revolution had existed for some time, but that which really tended to help on the revolution was a cause of a more general nature, and one that was intimately connected with the Frankish nation itself.

This was the constant division of lands which had been made on the deaths of the different Frankish kings. Five divisions of this nature had taken place between the reigns of Clovis I. in A.D. 561 and Clovis II. in A.D. 656. The result of the final division was the establishment of the two kingdoms of Neustria and Austrasia. The former comprised the territory situated between the Loire and the Meuse, the latter that which extended from the Meuse to the Rhine.

The countries which formed Austrasia were in Gaul, those originally occupied by the Franks. These countries ran up to the confines of Germany, and were united in terms of alliance with the old Frankish confederation which had

not passed the Rhine. After their expeditions, whether for the purpose of war or of plunder, their troops, instead of remaining in the lands which they had conquered, generally returned with their booty to their old settlements.

Roman civilization and Roman habits of life had never taken footing on the Rhine frontiers as firmly as was the case in the interior of Gaul. They had been almost annihilated by the frequent incursions of the barbarian invaders, and so German manners and habits exclusively prevailed in Austrasia.

In Neustria, on the contrary, the Franks were less numerous, more scattered, and farther removed from their old German compatriots and from their old country. They were surrounded by Gauls, and were in effect a colony of Barbarians transported into the midst of the Roman people and into Roman civilization.

The result of this was a distinction as much racial as geographical, affecting not only the political and social arrangements of the two divisions, but the language of each. *Francia Teutonica* is the name that the writers of the fifth century give to Austrasia; *Francia Romana* to Neustria. In the former, so these writers say, the German language prevailed, in the latter the Roman or Latin language.<sup>1</sup>

Between these two kingdoms the contest for power lasted for some time. At first the superiority of Neustria

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<sup>1</sup> Luitprand, lib. i. cap. vii., and Othon de Freysingen, lib. iv. cap. xxii., cited by Guizot: "*Essais sur l'histoire de France*," III<sup>e</sup> essai, p. 62 (tenth edition, 1860).

was the most marked, but towards the end of the sixth century the rivalry of the two queens, Fredegonde and Brunehault, brought the struggle to a climax. To resist the efforts of the Neustrian queen, Brunehault, the Austrasian nobility formed an alliance with that of the Neustrian, and the murder of Brunehault was the consequence.

From that time the Austrasian power became dominant, and the elevation of the mayors of the palace favoured its further development.

Against the efforts of the leading proprietors, Frankish and Gaulish, to obtain an independent footing in their own domains, and to live as absolute masters, the kings, at the head of their leudes or fideles, and supported by the clergy, were desirous of restraining and reducing them to subjection. The kings at first made use of the mayors of the palace in the struggle, and for a while with some success.

But the mayors of the palace from being the advisers and assistants of the kings, soon became the masters of the situation; and when, at the commencement of the seventh century, Neustria fell, and became a prey to incessant disorder, the Austrasian faction found vigorous chiefs in the Pepin family, and Roman France yielded to the superior force of German France.

Finally, when Pepin le Bref, in A.D. 752, was crowned king, and received the sanction of the pope, the Franks swore, under pain of excommunication, never to elect any other king than the issue of his loins.

The Merovingian dynasty came to an end, and under Charlemagne a larger and more important empire was

founded than the Frankish invaders could ever have dreamed of. Under his powerful sway the invasion of the Barbarians in the West was arrested; Germany ceased to be the theatre of the incessant fluctuations of a wandering population; the different tribes and the form of government became settled, and the social order and settlement of modern times received its first proper form and shape.

The reign of Charlemagne marks an era of splendid character in the story of civilization and of political progress. All the eminent writers of history who have dealt with that period of European life, dwell with evident pleasure on the subject, and by all of them has the subject been treated in a manner worthy of its greatness.

Gibbon, at the end of his fine description of the deeds and fame of Charlemagne, sums up thus:<sup>1</sup> "The dignity of his person, the length of his reign, the prosperity of his arms, the vigour of his government, and the reverence of distant nations distinguish him from the royal crowd, and Europe dates a new era from his restoration of the Western Empire." Guizot shows how the design of civilizing his people was his predominating idea, and how strenuously he laboured to introduce order and unity into the administration of all the countries which he possessed, and how by means of his "*Missi dominici*," and his general assemblies, he strove to reduce the chaotic and discordant elements of disorder and confusion in his territories to method, regularity, and cohesion."

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<sup>1</sup> "Decline and Fall," ch. xlix.

What Sir James Stephen, in his "Lectures on the History of France," says of him I shall advert to further on; but let me here specially refer my audience to his glowing eulogium at vol. i. pp. 85, 89. One cannot but note with approval Sir James's castigation of Gibbon for deforming his story of Charlemagne's character with revolting obscenities. But this was a tendency of Gibbon's nature which too often disfigures his great and valuable work. Had he always put his offensive detail in a learned language, it would have been better for most of his readers.

Sir Henry Maine, without dissenting from the view of later French writers, that Charlemagne was far before his age, quite as much in the character of his designs as in the energy with which he prosecuted them, says that "whether this be true or not, it is certainly true that in aiming at an unlimited dominion he was emphatically taking the only course which the characteristic ideas of his age permitted him to follow, and that of his intellectual eminence there cannot be a question, but that is proved by his acts and not by his theory."<sup>1</sup>

So fine is the eulogium that Hallam passes upon him, that I cannot resist the citation of it at length:—

"In analysing the character of heroes, it is hardly possible to separate altogether the share of fortune from their own. The epoch made by Charlemagne in the history of the world, the illustrious families which prided themselves in him as their progenitor, the very legends of romance which are full of his fabulous exploits, have cast

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<sup>1</sup> "Ancient Law," ch. iv. p. 106.

a lustre round his head, and testify the greatness that has embodied itself in his name. None indeed of Charlemagne's wars can be compared with the Saracenic victory of Charles Martel; but that was a contest for freedom, *his* for conquest; and fame is more partial to successful aggression than to patriotic resistance. As a scholar his acquisitions were probably little superior to those of his unrespected son, and in several points of view the glory of Charlemagne might be exterminated by an analytical discussion. But rejecting a mode of judging equally uncandid and fallacious, we shall find that he possessed in everything that grandeur of conception which distinguishes extraordinary minds. Like Alexander he seemed born for universal innovation. In a life restlessly active, we see him reforming the coinage and establishing the legal divisions of money; gathering about him the learned of every country; founding schools and collecting libraries; interfering, but with the tone of a king, in religious controversies; aiming, though prematurely, at the formation of a naval force; attempting for the sake of commerce the magnificent design of uniting the Rhine and the Danube, and meditating to mould the discordant codes of Roman and Barbarian laws into an uniform system. A strong sympathy for intellectual greatness was the leading characteristic of Charlemagne, and this undoubtedly biassed him in the chief political error of his conduct, that of encouraging the power and pretension of the hierarchy. But perhaps his greatest eulogy is written in the disgraces of succeeding times, and the miseries of Europe. He stands alone, like a beacon upon the waste, or a rock in the broad ocean.

His sceptre was the bow of Ulysses, which could not be drawn by any weaker hand. In the dark ages of European history the reign of Charlemagne affords a solitary resting place between the two long periods of turbulence and ignominy, deriving the advantages of contrast both from that of the preceding dynasty and of a posterity for whom he had formed an empire which they were unworthy and unequal to maintain.”<sup>1</sup>

From this review of the special influence of Charlemagne's reign upon the development of social, political, and intellectual progress in Europe, I shall proceed to notice shortly the reasons why the dynasty of Clovis and the Merovingian race of kings was so completely subverted by the Carlovingian race. It is to Sir James Stephens' "Lectures on the History of France" that I am indebted for the means of presenting them to you.<sup>2</sup>

First, the Frankish Conquest of the Roman Gallic provinces was never thoroughly accomplished; for in addition to the antipathy which alienated the Franks from the Gauls, the dominant from the subject race, the two sets of people were further divided one from the other by the indelible contrast of their characters, natural and hereditary.

Secondly, when Clovis became the conqueror of Gaul, he was not held by himself or others to have become the monarch of a definite territory, or even to have become, in the proper sense of the term, the sovereign of the old Roman Gallic inhabitants. No attempt was made to

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<sup>1</sup> "Europe during the Middle Ages," vol. i. ch. i. part i. p. 12.

<sup>2</sup> "Lectures on the History of France," vol. i. lect. ii. pp. 60-68.

impose upon the people the laws, the language, or the customs of the conquerors.

Thirdly, there was no system of civil administrative government, of which the Merovingian king was the head, or to which the provincial Gauls were subjected. Under the Romans, as we have seen, Gaul was divided into cities and rural provinces. In the cities rural affairs were conducted by municipalities. In the provinces municipal authority was represented and administered by a dux, or comes, or vice-comes. After the conquest the Frank herizog superseded the duke (taking his name, by the way); the Frank graf took the place and name of the count, or vice-count, and claimed in every city an authority co-ordinate with that of the old municipal magistrates. But the herizog and the graf did not maintain with the cyning (king) relations corresponding with those which the duke or count maintained with the emperor. The German viceroy raised the military recruits for which his district or city was liable, but made no other practical acknowledgment of responsibility or subordination to the king or to any other human being. Each herizog or graf was regarded as supreme, or at least as independent, within the limits of his own command.

Fourthly, destitute as the cyning (or king) thus was of all civil and judicial authority, he was equally powerless in the government of the Church. Her bishops and ministers were elected by the people at large, and provincial synods promulgated ecclesiastical laws without any preceding or retrospective sanction from the temporal sovereign.

Fifthly, negotiations and alliances with foreign states

were equally beyond his province, for as yet diplomacy and diplomatic relations were not. Nor was he the conservator of the peace of his people, for he had neither magistrates nor police under his orders.

Sixthly, the Merovingian king was not the legislator for his people, or rather, there was in those ages no Gallo-Frankish legislature whatever.

It is under this clause that Sir James combats the opinion that each of the German tribes, on its entrance into Gaul, promulgated at once the ancient codes of its nation, and then afterwards introduced into that code such amendments as experience suggested. He argues that the Gothic, Salian, Ripuarian, and Burgundian Codes were never established by the deliberate acts of a formal legislature, but were recapitulated (that is, edited) by aged men as memorials of the customs of their country. Whether one can give complete assent to this opinion of the learned and able writer now referred to is not free from doubt. The subject is one that opens ample opportunity for discussion;<sup>1</sup> but at all events this may be conceded, that the codes above spoken of were not, like the Capitularies of Charlemagne, the work of the supreme head of the state.

Seventhly, the Merovings were not the administrators of finance, nor had they any national revenue.

Now in all these points the distinctive characteristics of the founder of the Carlovingian line stand out clearly,

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<sup>1</sup> For this discussion, see the preface to the Salic Law, set out at full length in Guizot's "*History of Civilization in France*," ninth lecture, vol. i, pp. 453-456 (Bohn's edition).

and show good reason for the complete and successful subversion of the Merovingian race of kings by Charlemagne and those who came after him.

There had, no doubt, been causes at work that helped on the revolution, but the crisis came when the great emperor appeared on the scene, and to his genius the ultimate triumph of the one race over the other must be ascribed. For under him the empire was firmly settled and definitely fixed. ~~Its different parts were welded into~~ one compact body. He did become and was sovereign *de facto* over all the inhabitants of his vast domain; and he did attempt, and that with success, to impose upon them all the laws and customs of his own people. He introduced and strongly maintained a system of civil administrative government. He was the political head of his people, deciding upon all questions of war and peace, and regulating the magistrates and police, who were under his orders. By his *scabini*<sup>1</sup> and his *missi dominici* he upheld the regulations imposed by him on the different portions of his empire, and by means of his capitularies he provided for the legislation of his subjects. By his religious and canonical laws he declared himself the head and guiding spirit of the ecclesiastical body, reconstituting the ecclesiastical authority, and giving it a system of regularity and cohesion which it had to a large extent lost, and exhibiting to his people such a desire for their moral improvement as makes his reign a landmark at a period of time when the social, as well as the intellectual, progress of mankind was threatened with the gravest perils.

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<sup>1</sup> For *Scabini*, see Appendix, Note C.

You may perhaps wonder why I have dwelt at this length upon the life and character of Charlemagne, seeing that my business is not with the history of this or any other part of Europe generally, but with the rise, progress, and development of Feudalism and its influence upon the constitutional and political forms of life, first on the Continent and then in England.

I have done so for these reasons: first, the era of Charlemagne is that of the settlement of order, of law, and of government in France; second, because the order, law, government, and institutions of France were impressed upon the Norman invaders and conquerors of England; and third, because from the time of Charlemagne dates the forward and progressive movement of that Feudal system which, as I shall hereafter show, has so materially affected in many details of law and customary life our own system of jurisprudence and our own legislation.

What, then, was the precise effect of Charlemagne's government upon the history of European civilization and constitutional law?

It was this. He attempted, though complete success did not follow his efforts, to establish a system of administration that should be a lasting one. As M. Guizot says, despite the unity, despite the activity of his thought and power, the disorder around him was too large and too strong to be entirely overcome. Still, he did what none of his predecessors had ever thought of, he resolutely tried to introduce and maintain system and order.

He did his best to establish a local government as

distinguished from a central government, and this was effected by his two classes of agents—one local and permanent, the other itinerant and temporary.

In the first class were the dukes, counts, centeners (or hundred men), and the scabini, who were all resident magistrates, nominated by himself or by his delegates, and charged in his name to raise forces, to render justice, to maintain order, to receive tributes. With them appeared the beneficiaries or vassals of the king, who held from him, sometimes hereditarily, sometimes for life (often without any stipulation or rule), estates or domains wherein they exercised, partly in their own name, partly in that of the emperor, a certain jurisdiction and almost all the rights of sovereignty, whatever the nature and extent of their power might be (as to which the records are not very clear). All these were, beyond doubt, in habitual relation with Charlemagne, who made use of them everywhere, in order to convey and execute his will.

In the second class, and above these local and resident agents, were the *missi dominici*, temporary authorities charged in the name of the emperor to inspect the provinces, authorized to penetrate into conceded domains as well as into free lands, invested with the right of reforming abuses, and called upon to render an account of everything to the emperor. These *missi dominici* were for the provinces the principal medium of order and administration.

Then Charlemagne strove to make the central government strong and effective, and to give it the character of a true government by the establishment of national

assemblies.<sup>1</sup> Of these assemblies no less than thirty-five were held in the period of forty years between A.D. 770 and 813. Sixty capitularies and two hundred and forty-seven public documents and acts are enumerated by M. Guizot as evidence of the legislative enterprise of the emperor, and of his incessant care for the interests of his subjects. "Surely," says this learned writer, "such a table in itself testifies his activity of mind and of his energy."

But in addition to this we must not forget the revision which he caused to be made of the ancient laws of his Barbarian predecessors, especially the Salic and Lombardic laws.

In fact, activity—an universal, insatiable activity; a desire to think of everything, to introduce everywhere and with all despatch, life and order, rule and government, mark his reign. This is one of the striking characteristics of the man whose genius is impressed on the history of his own times, and still attracts our admiration at the present day.

At this period, then, of Franko-German story, I stop. It is not my design to discuss the history of Europe. All that I purpose to do is to exhibit the changes that have taken place in social order from the fall of the Roman Empire to the Norman Conquest of England.

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<sup>1</sup> See as to these assemblies, Guizot's "History of Civilization in Europe," vol. ii. pp. 194–197 (Bohn's edition). The letter of instruction written by Hincmar, Archbishop of Reims, is cited by M. Guizot at page 194. In it a most interesting account of these assemblies is given.

Why I have dwelt at some length on Charlemagne's reign is because, as I have said, it marks the birth of modern social life.

Great as he was, and far in advance of his time, he was unable to do more than to lay the foundation of a structure which, under the feeble Carlovingian kings who followed him, received many rude shocks. His epoch marks in the history of Europe the exact point at which the dissolution of the ancient Roman and Barbarian world was consummated, and it is from his reign that the formation of modern Europe and of the new world really dates.

When I come to that portion of my lectures which deals with the invasion of England by the Normans, and with the consequent introduction of Norman customs and Norman laws, as well as with the introduction of Feudal notions, I shall show what was the effect upon them of the customs and laws which were prevailing in the country wherever these Normans settled under Rolf. By that settlement, when Rolf attorned to the French king as vassal, and received from Charles the Simple the land "*in alode et in fundo*," the Normans became Frenchmen, and made Gaul French.

They settled at the point of transition when the old German state of things, though beginning to give way to the new French state of things, was still in visible existence; and if, on the one hand, Gaul was made French, and French Paris the capital of France by the Normans; on the other hand it was the Capetian revolution which gave Normandy her definite position in Gaul and in Europe, converting her people from a horde

of piratical barbarians to a nation influenced by the civilizing laws and customs which Charlemagne had first impressed upon the country of their adoption.<sup>1</sup>

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<sup>1</sup> For Rolf and the events of his life, his exploits and character, and the nature of his settlement in Normandy, the reader is referred to the graphic account thereof in Professor Freeman's "History of the Norman Conquest," vol. i. ch. iv. pp. 163-174 (3rd edition, revised. 1877).

## LECTURE IV.

### *THE WEREKILD AND TERRITORIAL STATUS.*

The Incidents of the Teutonic Settlement—The Werekild and the Influence of Land on Status—The Werekild Explained—*Quære*, whether it can be regarded as a Means of Classification—Its Importance on Two Grounds : First, as Introducing a Punishment for Manslaughter ; Next, as Limiting the Ancient Fæhde or Feud Right of Warfare—The Difference between Ancient and Modern Legislation in the Matter of Punishment for Crime noticed—The Influence of Land on Social Organization and on Status—Sketch of the Three Stages of Landed Property between the Fifth and Tenth Centuries ; viz. : Allodial, Beneficiary, and Tributary—Allodial Property, its Character, Incidents, and Burdens.

In a former part of my lectures, I spoke of two remarkable incidents of the Teutonic settlement of Europe that demand a somewhat lengthened explanation. I mean the wehrgeld or weregild, the money payment for the slaying of a man, and the influence of land upon the status of the individual.

These two incidents of Teutonic society deserve a special notice, because, when I come to speak of the Anglo-Saxon customs of England, we shall find one of them in existence, and because it is not easy to understand and properly appreciate the meaning and extent of Feudalism without a full, clear grasp of the other.

The substitution of death or imprisonment as the punishment for murder or manslaughter is a feature of

later legislation, and connotes the influence of a later set of legal notions upon social life.

The importance of land as a factor in the organization of society, which is so strikingly visible in England, emphasises the divergence of Teutonic from Roman customs. To these two subjects I now address myself.

I begin with that of the weregild, though I am inclined to think that, in point of time, it was posterior to the altered conditions of tenure of land, being a consequence of the new order of things that grew out of that distribution of land which resulted from the Frankish and Lombardic settlements in Gaul and Italy.

Generally speaking, the term weregild means the sum of money imposed on a man-slayer as a composition payable to the family of the dead man. According to some writers, this sum may be looked upon as the infallible proof or sign of the social condition of men in the community; for by fixing the exact value of each particular life, the measure of its quality in the social scale was given.

The inference these writers draw is that the weregild afforded a satisfactory test for the classification of the different members of the social group. In M. Guizot's opinion, these writers assign too much importance to the weregild when they look upon it as a method of classification. Yet, if we turn to the tabulated statement given by him of the various amounts payable under this composition,<sup>1</sup> I am inclined to think that the examples he cites somewhat militate against his view.

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<sup>1</sup> See "*Essais sur L'Histoire de France*," IV<sup>e</sup> Essai, p. 169 (tenth edition, 1860).

Certainly a different opinion is held by a very learned authority on mediæval customs and law, Bishop Stubbs. According to him, the weregild does mark a real distinction of rank. Every man's life had its fixed and precise value, and upon that estimate the actual value of his oath in courts of justice varied, and for offences against his life and property atonement was made.

Be this as it may, and even if we are not to look upon the weregild as a means of classification, yet its importance in two other remarkable points must not be overlooked.

It shows us, first, that in the times I am speaking the individual man was considered with reference to the particular community with which he was connected. His death, or an injury to him, was regarded as an actual loss to that body, and so the wrong had to be atoned for to that body in the shape of compensation. The idea that murder or manslaughter was a crime against the whole community, to be expiated by the highest punishment that can be given, viz. death, is an idea of later times, and of a very different and altered set of legal notions. In the early Franko-German legislation, and in our own country<sup>1</sup> prior to and down to the time of its settlement under its Norman conquerors, homicide was avenged in the manner above described.

But there is another feature of the weregild equally deserving of attention; and that is its connection with

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<sup>1</sup> Alfred and Guthrun's Peace (A.D. 879), § 2. See "Documents Illustrative of English History," by Wm. Stubbs, M.A. (Regius Professor of History, University of Oxford) (edition 1870, p. 63).

the *fæhde*, or feud-right of warfare, which every Teutonic freeman looked upon as an obligation attaching to each member of the family or tribe, and as inalienable.

This private right of warfare, as the history of the Teutonic settlers of Gaul, and of the Celtic tribes or clans in Scotland shows, was not confined to individual families; it was extended to the tribe or the clan. Nor was it limited by time; it was transmissible from father to son, and to later descendants.

Probably many of you know Sir Walter Scott's novel, "The Fair Maid of Perth." One of the incidents of that story is the feud between the two Highland clans, the Clan Chattan, and the Clan Quhaile. Sir Walter has worked with great vigour upon that theme, and shown the intensity of hatred consequent upon the hereditary feud between the two clans, resulting in the utter extinction of one of them in the combat fought upon the Inches of Perth.

Now, one may well understand that a right of this kind, a privilege possessed by every freeman before he consented to enter into any political bond; a right which, admitting as its most general term that each freeman was at liberty to defend himself, his family, and his friends, and avenge his and their wrongs to the very utmost, might be a source of danger to the whole community, and, further, might be productive of loss of lives that for fighting purposes were valuable at a time when warfare and foraging were incessant.

*N.B.* The idea of homicide as morally wrong was an idea utterly alien to the rough notions of a community that lived for and maintained itself by war; but the idea that its fighting strength might be weakened by losses

consequent on private feuds, or that these might interfere with public enterprises, would naturally occur to its wiser heads as a source of danger to the strength and consistency of the tribe or nation. Hence, *ex necessitate rei*, this right of private feud must in time require some restrictive regulations.

The first step in that direction would naturally be to provide some method defining and limiting its sphere and the extent of its action. This was effected by recognising a *lex talionis*, viz., life for life and limb for limb; then, by imposing a tariff by which injuries should be rated, the State being the arbitrator, and the State assuming to itself the duty of compelling the injured party or parties to receive, and the wrong-doer to pay, the settled amount; then, by introducing a life-price, that is, a weregild, as the basis on which the proper settlement of feuds should depend; and lastly, by making this life-price an amount proportioned to the special value—to the State as well as to the private family—of the life taken or the person injured.

The weregild, therefore, is of importance in the early history of social organization; first, as showing the value in the social scale of the different members of the community, and to that extent a clue to the proper classification of the individual men in the nation; and secondly, as the commencement of the later notion of punishment for homicide.

But then there is a remarkable difference between this old mode of remedying wrongs of violence and the later modern idea of penal legislation, which deserves attention; and it is this.

In modern legislation the law strikes and punishes without troubling itself to know whether the guilty party accepts the penalty or not, whether he acknowledges the wrong, whether his will does or does not concur with the will of the law. Modern legislation acts only by constraint, and it is under the feature of force that justice appears to him whom she condemns.

Whether this be wrong or not is another question, which I do not attempt to discuss. I speak of it as the opposite to the archaic form of composition or the weregild. For this supposes the avowal of wrong by the offender. It is, in its way, an act of liberty. The offender may refuse the composition, but then he runs the risk of vengeance from the offended and his kin. He may accept it, and then he acknowledges himself guilty, and offers reparation for the offence. The offended party or parties, on his or their side, in accepting the composition, reconciles or reconcile themselves, each or all of them, with the offender, solemnly promising to forget, to abandon vengeance; so that, as is well pointed out by M. Guizot, composition as a penalty has characteristics much more moral than the punishments of more learned legislations. It gives evidence of a profound feeling of morality and liberty.

From the weregild I go on to the consideration of that other important incident arising out of the settlement of the Teutonic conquerors of Europe, which I have mentioned above. I mean the influence of land upon the social organization, and the change resulting from the possession of land upon the status of the individual.

If I were lecturing upon the history of property, and the changes that have taken place therein, first by the Roman law, and second by the Barbarian customs and laws, I should have very little difficulty in dealing with the subject by a large reference to Sir Henry Maine's admirable chapter (ch. viii.) in his well-known treatise on Ancient Law.

But my object now is not to portray the changes that have taken place in the history of property; all that I want to show is by what steps law in its relation to land became a feudalized law, and how, from the time of the fall of the Roman Empire, the status of the individual became closely bound up with territorial property. For (as I think I shall be able to prove) Feudalism, which for so long a time kept its hold over the greater part of Europe, was really the result of this intimate connection of personal status and territorial status; and therefore, what I am going to do is to trace the various stages of property in land from the end of the fifth to the end of the tenth century.

Those stages are three: first, Allodial lands; second, Beneficiary lands; and third, Tributary lands; and this will bring me to Feudalism proper, the political force and influence of which I shall have to dwell upon. The proper understanding of this matter is, I venture to think, a fitting introduction to the history of social order and social organization in England.

I begin, then, with Allodial lands.

The exact meaning of the word *alod* has engaged the attention, with strangely varying results, of many learned English and foreign writers, and much controversy as to

its true derivation has been stirred. I reserve for a note at the end of this work what has been said about it.<sup>1</sup>

With one of these writers, M. Guizot, I am inclined to agree. He thinks, and supports his view with a good deal of reason, that the term *alod* is connected with the old German word *loos*, lot. At all events this is certain, that the first *alods* were the conquered lands which in Italy were occupied and distributed, or lotted out.

These lands so lotted out were latinized in the word *sors*, and thus we meet in the old Barbarian laws with the terms, *Sortes Burgundionum*, *Sortes Gothorum*, etc.

What seems to have taken place was this. Each warrior who was of sufficient importance to demand or to receive a share of the conquered lands, took or received two-thirds of the lands in the territory which was assigned to him. *Duas terrarum partes ex eo loco in quo ei hospitalitas fuerat delegata* (Lex Burg., lib. liv., § 1).

It is true that in the history of the Frankish conquests we do not come across any formal indication of a similar distribution. Yet we do know that the booty which fell to the share of each set of conquerors was allotted among the warriors of the tribe, and we do find that, in respect of territorial property, a manor (*mansus*) was originally called *sors* (*loos*). The first *alods*, then, were properties entirely independent, and held by the owner or proprietor free from all control, and from all suit or service, and capable of disposition as the holder pleased.

A man held his *alod*, it was affirmed, of no one but God and his sword; and so Hugh Capet was said to hold

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<sup>1</sup> See Appendix, Note E.

his crown, because he was bound to no one. Every Frankish warrior then, we may assume, who took or received by lot a portion of land, was as much master of it as he was of his own person. Therefore, full and entire liberty of ownership was the fundamental characteristic of the first alods, and in this manner Ducange explains the nature of the property, as not only free from all payments, but quit of any and every service, real or personal, even though the owner of the alod did acknowledge a superior lord, under whom he held it *in feudum honoratum*.<sup>1</sup>

The advantage of holding in possession lands under these free conditions was too great to be long confined to allottees, and so the extension of the allodial quality was soon attached to other forms of acquisition obtained not by lot but by sale, succession, or any other way. In this way the number of alods was largely increased, equally marked by similar freedom from burdens of all sorts.

Still, the term itself (alod) was for a while confined to the original allotments, as distinguished from the later acquisitions, although these later ones were held on the same independent terms. In the *Formulæ* of Marculf appear many instances of this distinction: *e.g.*, "Tam de alode aut de comparato vel de quolibet attractu" ("Formulæ," lib. ii. cap. vii.), "As well of alod or of acquired land, or land got in any manner"; "Tam de alode paterno quam de comparato" (Id., cap. xii.), "As well of the paternal alod as of acquired land"; "Tam quod de alode parentum quam ex meo contractu mihi obvenit" (App., cap. xlvii.), "As well what has come to

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<sup>1</sup> A *feudum honoratum* was a fee owing no service whatever.

me either as the alod of my ancestors, as by my own contract."

Now here we get a possible and probable explanation of what was called Salic land, in respect of which was attached the condition of the exclusion of females from the inheritance.<sup>1</sup> This Salic land, in all probability, was the original alod; the domain acquired at the moment of conquest, and which was capable of becoming the principal establishment of the chieftain of the house.

In this sense you will find that the Salic land of the Salian Franks is met with among all the barbarian populations of this period. Among the Ripuarian Franks it was called *terra aviatica*; among the Burgundians, *terra sortis titulo acquisita*; among the Saxons, *hæreditas*; and in the Formulæ of Marculf, *terra paterna*.

What these lands were, and what was the cause of the exclusion of females as a distinctive mark appertaining to them, has been a subject of much dispute.

Hallam suggests as a probable cause that this practice of exclusion was strictly in accordance with the ancient usages of the Salian Franks, in order to secure the military service of every proprietor. And this view is to some extent supported by the fact that lands subsequently acquired by other means, though equally bound to the public defence, were relieved from the severity of this rule, and presumed not to belong to the class of Salic.

By degrees the distinction I have pointed out between the original alod and the later acquisitions disappeared,

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<sup>1</sup> See the provisions as to this in the "Lex Salica," lib. lxii. cap. vi., and the "Lex Ripuaria," lib. lvi cap. iii.

and the term *alod* was applied indifferently to all lands, however held or acquired, which were free from service to a superior lord, and then the distinctive characteristic of the *alod* consisted no longer in its originating title, but in its complete independence; and so the terms *proprium*, *possessio*, *prædium*, etc., were employed as synonymous with the term *alod*. This probably was the process by which the gradual extinction of the ancient rigorous exclusion of females from the succession to the Salic land was worked out.<sup>1</sup>

We see, then, what the *alod* was in its origin, and what became of its earliest characteristics. The next point to be noticed is the burdens and obligations that were imposed upon allodial proprietors.

Before the conquest of Gaul, the relations of the Franks amongst themselves were entirely personal. The state was the family; the tribe was the warrior band. The idea of territorial property had scarcely any existence. It was not an element in the social organization. It created no tie, no permanent relations whatever.

After the conquest, the Franks became proprietors. Many of them were settled in the lands which they had received or seized. As a consequence, this important revolution of ideas was affected, that the state came to be made up, not only of men but of territory, and territorial relations were added to personal relations.

Such a revolution was of slow growth. It was necessary that the Franks should comprehend the idea of the state as a territorial body, and should grasp the notion

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<sup>1</sup> See Appendix, Note F.

that the proprietors of land ought to have cohesion and unity.

For a long while the personal relations of the members of the community one with the other were the only ones recognised, and to their eyes the independence of the individual alone presented the true idea of liberty. The possessions or holdings were as free as the individuals themselves, and the Frankish proprietor understood as little of the existence of obligation towards the state as the Frankish huntsman or warrior had formerly done towards the band from which he was always free to separate.

Thus the establishment of the Barbarians on the soil almost entailed the dissolution of the old social life before it became the principle of the new social life.

Up to this time the men of the band or tribe had lived together. Their relations were only personal, it is true, but they had some element of unity in them. As soon as they became proprietors, they separated, and the separation, the isolation of the individuals, was the first step towards the new condition of social relations which property rights must bring with them.

It is difficult, therefore, to imagine that at a period when personal relations were dissolved without being replaced by *real* relations, that is those resulting from the possession of land, that the holdings or properties should be bound together—either among themselves or towards the state—by any well regulated system of public obligation.

The public body, the state, had no actual existence in the imagination of the Franks, who only recognised the

relations of man with man; and a tax or charge, in the meaning that we attach to the terms, appeared to them nothing but a violation of freedom, or a theft imposed by the strong, and to which the weak alone would be forced to submit.

The allodial proprietors, then, were subject to no public impost. Absolute independence was the right of the proprietors, as regarded their property as well as their persons. Doubtless this condition of independence rested on no other guarantee than the power of the possessor, but in resorting to force to defend that independence, he believed he was legally justified.

One may well conceive that the social body cannot subsist in such a state of possible dissolution as must be the direct consequence of the isolation of the individual. Hence the system of allodial proprietorship was bound to disappear by degrees, and to give place to that of beneficiary proprietorship; for this alone was capable, at this era of civilization, of forming out of a great territory a state, and out of the mass of proprietors a social body.

We shall see, by-and-by, how this change was effected. But during the intermediate period, it is impossible to suppose that the allodial proprietors would be allowed to isolate themselves entirely, and that the alods could be exempted from the payment of certain imposts.

What these imposts were I will now state. First, gifts made to the king, either at the time when the assemblies of the Champs de Mars were held, or when the king was passing through and staying in the different

provinces.<sup>1</sup> These gifts were at first purely voluntary, as a mark of deference or attachment, or as means of attracting the favourable notice of some powerful chieftain. By degrees custom and force impressed upon them a kind of obligatory requisition, from which the alods were not exempt, and then in time the form and mode of giving them were regulated by rule.

At last the obligatory nature of these *gifts* became so well established that Louis le Debonnaire (in A.D. 817) published at Aix La Chapelle a list of those monasteries which were bound to make such gifts, and of those that were not so bound.

Secondly, taxes for providing means of transport and for other objects, either for the *missi* of the king, or the other *missi* whose duty it was to traverse the country at the royal command. This impost was probably the origin of a public charge imposed on property for public purposes, and affecting all kinds of territorial property without distinction.<sup>2</sup>

<sup>1</sup> "On the day of the Champs de Mars, according to ancient custom, gifts were offered by the people."—*Annales Hildesh.*, A.D. 750, ap. *Leibnitzii Script. Rerum*, Brunswick, tom. i. p. 712.

"He who was declared to be king was carried on a waggon drawn by two oxen. Then sitting on some elevated place, once a year he showed himself to the people, and received the gifts that were offered him."—*Ann. Fuld.*, A.D. 751.

<sup>2</sup> The king to all his agents now declares: "Following our directions already given to the most reverend Bishop and the Lord Count of those parts, our present orders are that you see to the providing in all those convenient places mentioned of proper facilities for travelling (*evectio*), and due supply of food and drink (*humanitas*); that is to say, you are to have ready so many post horses for public roads

Every owner of three manors (*mansi*) or more was bound to march in person. The owners of one or two manors were allowed to join their funds together for the purpose of providing the expenses and equipment of one of their number,—but in this proportion, three manors were bound to provide one fighting man. As to those who had no landed property whatever, but were possessed of moveables to the value of five solidi, they were divided into sets of six, and each set was bound to provide the expenses and equipment of one of their number as a fighting man.

Nor was this charge or impost confined to the lay portion of the Frankish country. Ecclesiastical corporations were subject to it.

Under Charles the Bald exemption from military service was restricted to the case of an invasion of the country by an enemy, and then the whole body of the freemen, under the name of *landwehr*, was bound to answer to the summons to war (A.D. 847-877).<sup>1</sup>

Occasionally, also, other charges were imposed on the allodial proprietors,—as, for instance, to meet the pressure of great or unforeseen emergencies, or in order to provide for the special exigencies of the time. Thus Charlemagne (in A.D. 779) levied a duty in consequence of a severe famine, as did Charles the Bald (in A.D. 877) in order to provide for the money required to buy off the Normans and to secure their retreat.

From this examination of the nature of allodial hold-

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<sup>1</sup> See the Treaty of A.D. 847 between Lothaire, Louis le Germanique and Charles le Chauve, in the collection by Baluz, tom. ii. p. 44.

ings and the charges to which they were liable, I proceed to explain their history, and to note the changes and alterations in them prior to the period if not of their destruction, at least of their restriction consequent on the full establishment of the feudal system.

It must not be taken for granted that after the conquest all the Franks became proprietors, and that as a result the number of alods grew all at once to large proportions. As I have already pointed out, what the Franks cared most for in their earlier invasions was plunder and booty, not land. Enriched with that booty, they were content to return to their original habitations, remaining there till their restlessness or their greed impelled them on to fresh invasions.

Again, it would be a mistake to suppose that after every successful expedition the band of warriors broke up and, separating into individual families, settled at once upon the conquered land. This would have been not only a source of danger to themselves, but something contrary to their primitive ideas and habits of life. Hence there were at first very few distributions of land.

Every warlike band comprised a certain number of chieftains, who were followed by a certain number of companions. Each chieftain took or received the lands for himself and his followers, and these continued to live with him. Apart from the very nature of the expeditions, and later, upon the establishment of the feudal system, one special circumstance removes all doubt in this matter. I mean the great number of poorer Franks who lived on the unpossessed lands in the vills of the king or of some chieftain.

The old laws are full of enactments regulating the rights and the lot of this class. These laws provide for the summoning the freemen who are dwelling on the territory of some other person to the public assembly or *placitum*. Moreover, we have the form of contract by which a man placed himself not only under the protection, but in the service, of another, on condition of being fed and clothed, though still free. The number of Franks, then, who were directly and personally proprietors of alods was at first far from extensive.

Two important causes tended to produce this effect: one was forcible deprivation or dispossession, the other was the custom of donations to the churches.

There can be no doubt (for the chronicles and the laws prove it) that from the seventh to the tenth century the proprietors of small alods were little by little robbed of their small holdings, or reduced to the condition of tributary tenants by the rapacity of the great proprietors.

Marculf gives us a specimen of a royal mandate to the counts, directing them to give ear to the complaints of a *fidelis* who prayed for relief against the forcible invasion and seizure of some one in this or that particular county on and upon the complainant's land.<sup>1</sup>

Nor were the counts themselves, the bishops or the abbots, free from blame. Thus an *ordonnance* of Louis le Debonnaire (in A.D. 816) in answer to a remonstrance of certain Spaniards who had fled from the Saracens and were settled in the south of France, shows us the extent to which the grievances of the small proprietors had

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<sup>1</sup> Marculfi "Form.," lib. i. cap. xxviii.

reached owing to the violence of their more powerful neighbours.<sup>1</sup>

The constant repetition of these royal injunctions attests the inability of the royal power to redress the mischiefs complained of; and thus, through the aggression and violence of the more powerful owners, the number of the smaller and poorer alods suffered diminution.

In addition to this cause another was at work, viz., the increasing tendency to make gifts to the churches. To extend their landed holdings and to add to their importance, the bishops had never been less inclined to force and violence than the powerful members of the lay body.

But in addition to that active form of acquisition, the ecclesiastical corporations possessed means of augmenting their wealth quite as efficacious to them, and one which they alone could turn to account. That was the opportunity which they readily seized of working on the superstitious fears and hopes of the Barbarian converts to Christianity.

This means of enlarging the possessions of the churches and monasteries, strengthened as it was by the approval and sanction of the royal publishers of the barbaric codes and laws, was so successful that endowments of ecclesiastical bodies by the Crown and by individual proprietors were ever on the increase.

The old histories and capitularies are full of such

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<sup>1</sup> The *ordonnance* is cited at full length by M. Guizot, "*Essais sur l'Histoire de France*," IV<sup>e</sup> essai, p. 94, tenth ed. 1860, from Baluz, t. i. pp. 569-572.

donations, and thus through the two influences of force and superstition, the number of alods was constantly diminishing, and save for a cause of which I have now to speak, allodial property—that is, free and independent property—would have utterly disappeared at a much earlier date than that of its actual decline. This cause was the introduction of what has been termed benefices.

When the notion of beneficiary holdings was first started, the tenure was in one important point distinct from the allodial possession, viz., that the benefices were held not in full, complete, and perpetual freedom, but precariously and in dependence on the donor. To get rid of these shackles and to convert the dependent tenancy into a free alod was the constant effort of the beneficiary grantees; and to restrain their efforts in the direction of conversion, royal interdicts were always being published.

From the time of Pepin and Carloman down to that of Charles the Bald this contest was a determined one. At length, in the time of this last king (about A.D. 860), when the feudal system was starting into life, allodial property gave way to beneficiary tenancy, and though the terms “alod” and “alodes” still remained in the royal proclamations and capitularies, yet they were really used to designate the new class of hereditary benefices and beneficiaries.

## LECTURE V.

### *TERRITORIAL STATUS (Continued).*

Beneficiary Possession—What was a “Beneficium”?—How did the idea of Beneficiary Possession arise?—Its History Traced—Four Kinds of Beneficiary Possession—Explanation of each Kind—Influence of the Custom of Commendation on Allodial Property—Its Connection with Beneficiary Grants—Its Importance in Relation to Feudalism—Tributary Holdings: their Character, and the History of them—Prepare the Way for Feudal Tenures.

BETWEEN the reigns of Charlemagne, whose efforts to prevent the benefices from being converted into alods, and that of Charles the Bald, a remarkable change was being worked out. The benefices had acquired the stability of alods, and the greater part of the alods had disappeared or been converted into benefices. How this took place I shall now try to make clear.

And first we must know what a benefice was. Alod, as I have shown you, was full, independent property. Beneficium, or benefice, on the contrary, meant, as the word itself expresses, an estate received from a superior lord by way of recompense or of favour, and to which certain duties and services were appended. This is the explanation of the term as derived from the word itself, but this explanation does not, of course, show how the idea of beneficiary interest, so utterly at variance with allodial property, arose.

To ascertain this idea, that is to get at the origin of benefices, one must go back to a very early period of the social life of the Germanic or Teutonic hordes. Now, if you refer to the "Germania" of Tacitus, cap. xiv., you will read that as a reward for their bravery in the field, and as a means of attraction to war or attachment to the person of the chiefs, presents of arms or of horses were made to the bravest warriors of the band by these chiefs. Later on GIFTS of estates (*not allotments*) were added to the presents of movables, and these gifts were precisely what the word benefice implies—rewards and recompenses for services rendered.

Two results of an opposing nature were the outcome of these two classes of gifts. By the presents of arms, horses, and feastings, the chief retained around him those whom he had so enriched, as well as others who were hoping for similar rewards in the future. Again, these personal presents were unlimited, at least to a large extent unlimited, and the fund from which they came was the spoil of the battle ground; therefore the recipients of the booty, as well as other expectants of favours, were always ready to follow their chiefs on other expeditions.

Personal presents and personal rewards were therefore a stimulant to cohesion. But the gifts of estates had an effect entirely different from the personal gifts. Those who received the estates naturally wished to establish themselves upon the benefices and to live on their estates, there to become in time the centre of a new society.

Again, the distribution of lands, unlike that of booty, was a distribution of a limited nature. In process of

time, and as the number of expectants increased, the means of distribution would become gradually circumscribed, and so the result of beneficiary gifts of lands was not cohesion but separation, not an eager longing for more rewards, but a quiet contentment with the territorial gift.

This, of course, was not a very favourable condition of things for the chiefs, who by these beneficiary gifts found a process of disintegration going on, and so their constant efforts were directed to the resumption of the gifts whenever it suited them, whereby to obtain the means of attracting to their ranks other companions.

In opposition to them, the beneficiaries strove with all their power to retain the full and unalterable possession of their estates, and to free themselves from their obligations towards the chief from whom they held them, but with whom they no longer lived, and whose fortune they no longer shared.

The gift by way of benefice, then, was a feature of Frankish life as old as any of their earliest adopted forms, and is contemporary with their most remote settlements in Gaul. It was a direct result of the necessary influence of territorial conquest upon social life and social habits.

The effect it produced was this: the beneficiary gifts bound the fideles and the leudes to the chief by whom they were given; and this we see repeated at a later date in the connection of lord and vassal under the feudal system.

I have already pointed out the disintegrating process consequent on these beneficiary gifts of land. The war-

rior band lost its strength through the inclination of many of its members to retire on to their benefices and live apart from the main body. The problem that the leaders of the bands had to solve was how to retain these beneficiary followers, or how to recall them to the ranks, as well as how to have in store a continued supply of gifts of this sort. A solution of these problems is to be found in the mode in which these donations were conceded, and in the duration of such concessions.

As I have already stated, from the earliest date of the complete Frankish settlement down to the feudal period, two opposite agencies were at work, so far as these donations are concerned. One, that of the recipients to keep their hold on them, even beyond their lives. The other, that of the donors, whether royal or otherwise, to recall them at will, or to grant them only for a limited term.

Therefore, what we find as a fact in the history of this form of gift is a fourfold division of benefices: first, those revocable at will by the donor; second, temporary benefices; third, benefices for life; and fourth, hereditary benefices, whether so expressed in the gift, or made heritable after and apart from the gift.

As to those revocable at will; under the Merovingian kings, arbitrary revocation was an established fact, but a fact only, and not a right. The grantors of the benefices sought to retake, and very frequently did succeed in retaking, the land which they had given; but it was only by dint of superior force, and against the will of the grantees, who so far from recognising as a right the claim of the donors to recover the lands, were urgent in their reclamations against the illegality of these acts of violence.

In the Treaty of Andely between Goutran and Childebert (A.D. 587), a clause of restoration in the event of wrongful seizure of land was inserted; and Charlemagne, says Eginhard, would never allow a lord to retake in anger or without just cause the benefices with which he had endowed his vassals. The later capitularies bear constant testimony to the illegality of the seizures, to the complaints of those who were wronged, and to the denunciations of the kings against the wrongdoers. As a fact, the power of arbitrary recovery existed, but the only right that was recognised by the laws was that of the donor to retake his grant in the event of failure of fealty, of treason, of rebellion, or of any act committed by the *fidelis* resulting in injury to the chief or in loss or diminution of service.

At this time, then, absolute possession and arbitrary resumption were never the privilege of the beneficiary or the right of the grantor. Nor was there any recognised rule in regard to the duration of these grants, or the obligations attaching to them. Still, it was always understood, so long as the ordinary duties and obligations that were due from the *fidelis* to his chief were fulfilled, that the interest of the former in his benefice would not be interfered with.

According to Montesquieu, these temporary benefices mark the second stage of the beneficiary grants. His thesis is that the custom of annual grant was the feature by which they were specially distinguishable. Against this view Guizot contends, and with much sound reasoning.

As he points out, there is no special or positive instance of the existence of any temporary beneficiary

grants, although there are cases of what may be called tenancies, granted by the churches for a fixed quit rent, and on a contract framed upon the model of the old Roman form of *precarium*, lasting generally for a year. This form of grant was frequently conceded by the ecclesiastics in order to obtain protection from some powerful neighbour, or for some other special reason. Sometimes no payment was asked for.

The practice thus introduced became subject to abuse, and a good deal of injustice was the result of it, very often to the detriment of the spiritual grantors, whose temporary grants were made the ground of a permanent seizure. Sometimes, too, in times of pressing emergency, when the means of carrying on hostile expeditions were needed, the king made a demand upon the ecclesiastical proprietors, and under a precarious grant from these bodies to him took possession of their domains.

This was done by Charles Martel and by Pepin, and in the capitularies of Pepin and his brother Carloman we read of a forcible seizure of this sort made for the maintenance of their troops on the condition of a money payment, to the owners, of a solidus, or twelve deniers, for every metairie of land, with a further condition for a renewal of the grant for such longer period as might be necessary.<sup>1</sup>

In all probability very few of the benefices thus seized were ever restored, and thus it happened that these

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<sup>1</sup> A decree of Charles the Bald fixes the duration of precarious benefices at five years, as in accordance with ancient usage, with a power of renewal if needed. Cf. Baluz, tom. ii. p. 64.

concessions, which originally were granted by way of *precarium*, between the sixth and the tenth centuries ceased to be temporary, and were converted by the grantees into benefices of an hereditary character.

The third class of benefices comprises those that were granted for the life of the grantee. Of these there are many examples in the old documents. From the time of the establishment of the Carlovingian dynasty, instances of this sort of grant are of frequent occurrence in the capitularies, and then the custom grew of extending the grant from the life of the immediate grantee to that of his son.

Under Charlemagne, the practice of making grants for life only was in vogue, and his efforts were strenuously directed to the prevention of these beneficiary grants from being converted into alods, that is, into property that might be transmitted to the heir. He also strove to provide for the proper management of the estates by the grantees, so as not to injure the reversionary interests of the grantor; for the humane treatment of the slaves employed upon the beneficiary domains; and for the restriction of sales of the produce of the land beyond the necessary wants of the concessionaries. The same regulations were enacted by Louis le Debonnaire.

But all were without effect; for, in spite of royal decrees, the beneficiary proprietors succeeded in obtaining full and complete property rights over the lands granted to them.

Thus the fourth stage of these grants was reached, viz., that of benefices with the power of transmission to the heir of the grantee.<sup>1</sup>

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<sup>1</sup> See Appendix, Note G.

Such, then, is the progressive history of these beneficiary grants. First, a grant dependent for its duration on the will of the grantor; then a concession of the principle of possession for a fixed term, whether for one year or for five years. Then an extension of this fixed period to the life of the grantee; and then, finally, full and complete ownership, with a power of transmission after death.

It would take up too much time if I were to discuss in detail all the matters appertaining to this class of proprietary ownership of land, and I must therefore notice in a very brief manner one or two points connected with them. One relates to the obligations and duties to which the beneficiary proprietors were subject; the other to the causes of the constant and steady extension of this mode of grant.

As to their obligations. The beneficiaries were bound primarily and imperatively to render military aid and assistance to their lords or superiors, under pain of forfeiture; and next in some cases to render services both personal and domestic.

They were frequently summoned to attend the king's court, and failing attendance were liable to lose their benefices. Thus Eginhard writes to the Count of the Palace to intercede with the Emperor Louis le Debonnaire in favour of one Frumold, whose old age and infirmities had prevented him from doing suit to the emperor, praying him to prevent the forfeiture of his benefice, which had descended to him through his father.<sup>1</sup>

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<sup>1</sup> See Epist. Eginhardi, ep. xxvi., in the "Récueil des Historiens de France," tom. vi. p. 374.

Under Charlemagne the custom of exacting an oath of fidelity to the king became very frequent, a custom continued by his successors.

From these causes, then, and from others, the number of beneficiary grants was always on the increase. Benefices were freely granted for services rendered to the royal chief. They were carved out of various neglected portions of the royal domains by the great lords who had taken advantage of the weakness of the Crown, or the negligence of the king's officials, to appropriate them to themselves, and thus were established in places where the lands had been deserted by their former holders, and had gone out of cultivation owing to the insecurity of the times and the consequent decay of the population.

But there was one special cause which, more than any of those above noticed, acted in a remarkable manner upon this class of proprietors, and swelled their ranks. I mean that curious form called "Commendation," owing to which alods were converted into benefices by the voluntary acts of the allodial owners themselves.

The mode of operation was a very singular one, and is carefully set out by Marculf ("Form.," lib. i. cap. xiii.). It took place thus. The owner of a domain, holding in his hand a turf or a branch, presented himself before the king or some powerful leader under whose protection he wished to place himself, and yielding up to him his own free holding, received it back again as a beneficiary grant, to be held, transferred, and disposed of on his own terms, but subject to this condition, that the grantee should thereafter acknowledge the grantor as his superior and territorial patron.

I shall not attempt to discuss at length the origin of this custom. It is traceable to a very early date, for something like it is visible in the laws of the Visigoths and of the Lombards. Charlemagne, on assigning the throne of Italy to his son Pepin, received from him the assurance "that the Lombard freemen should always be allowed to commend themselves to whom they pleased, in accordance with the custom in vogue of old under the Lombard kings."

The special features of commendation were as follows : It introduced a tie or relation between the two parties of a closer kind than that between the lord and vassal under the beneficiary grants, because it was of a personal nature, more nearly approaching to that of patron and client in the Roman Republic. Then (and herein consisted its importance) it afforded a protection for the weaker proprietors by the aid of a more powerful superior, and also gave the Government more security for public order.<sup>1</sup> Thirdly, it prevented the drifting of the less powerful freemen into a condition of servitude and of feudal vassalage, because it enabled them still to preserve their allodial property, and to insure its defence by the stipulated money payment called *salvamentum*. It enabled the weaker party to avoid the risk of mere feudal dependence by the power conferred on him of dissolving the contract at his pleasure without incurring a forfeiture. And lastly, it was beneficial to the superior by the exaction of homage and frequently of military service.

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<sup>1</sup> In this respect it was regarded as a useful institution even in Anglo-Saxon England,

Historically, it is of importance because, among other causes, it prepared the way for feudalism proper, the influence of which, as I shall show hereafter, effected striking changes in the laws and customs of England after the Conquest.

In concluding my remarks upon this subject, commendation, I quote the following passage from Hallam :<sup>1</sup> "Let the reader keep in mind that the feudal system, as it is commonly called, was the general establishment of a peculiar relation between the sovereign (not as king, but as lord) and his immediate vassals, between these again and others standing to them in the same relation of vassalage, and thus frequently through several links in the chain of tenancy. If this relation, and especially if the latter and its essential element, *sub infeudation*, is not to be found, there is no feudal system, though there may be analogies to it more or less remarkable and strict. But if he asks what were the immediate causes of establishing this polity, we must refer him to three alone : to the grants of beneficiary lands to the vassal and his heirs, without which there would hardly be *sub infeudation* ; to the analogous grants of official honours, particularly that of count or governor of a district ; and lastly, to the voluntary conversion of allodial into feudal tenure through free landholders submitting their persons and estates by way of commendation to a superior lord or to the count of a district. All these (though several instances, especially of the first, occurred much earlier) belong generally to the ninth century, and may be supposed to have been fully

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<sup>1</sup> "Europe During the Middle Ages," vol. i. p. 318, note to ch. ii.

accomplished about the beginning of the tenth. To which period, therefore, and not to an earlier one, we refer the feudal system in France."

At that period the contact between the French and the Normans had become closer. Am I wrong, then, in assuming that the history of the development of the feudal system visible among the Normans (upon their establishment in England) must be traced back to the causes of its rise and progress among the Frankish settlers in Gaul.

I have now taken you through the two epochs in the progressive settlement of property in land after the disappearance of Roman life, habits, and customs in Europe, consequent upon the Barbarian invasions; viz., the Alod and the Benefice.

I still have to speak of the third stage in the history of land tenures—that of the Tributary. When I have done that I shall have prepared the way for the consideration of the feudal system.

All the old muniments show the existence of tributary lands. I do not assert that they were subject to any public tax, but that they were held under a superior lord upon payment of some kind, and that the cultivators did not retain full and complete proprietorship in respect of them.

You will find instances of this in the capitularies of Charlemagne, of Louis the Pious, of Charles the Bald and of other kings. Even before the invasion of Gaul by the barbarians (as a passage from Salvianus proves)<sup>1</sup>

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<sup>1</sup> Cited (from "*L'Histoire de la Monarchie Française*" of M. de

some such thing is to be found. For even then, such was the weakness of the laws and of the officials, that the feebler and poorer proprietors were obliged to purchase the protection of some stronger individual.

This state of things became worse after the conquest of Italy and Gaul, and so the number of tributary occupiers was ever on the increase.

When the Barbarians seized the conquered provinces, their chief object was to obtain the means of living rather than to settle for the purpose of cultivation. Their ideas as to property in land were without form or consistency.

The old cultivators of the soil had never been absolutely dispossessed, nor were they reduced to a condition of slavery. It was enough for the new comers if the old inhabitants were able to provide for the wants and wishes of their masters, or to work the lands for their benefit, subject to the caprice of the conquerors.

When the Lombards invaded Italy, they were satisfied at first with exacting a third of the produce of the soil, or, in other words, with making the old occupiers tributaries. Therefore, whenever a barbarian chief settled with his following, he allowed the old cultivators to remain on the land. Nor did he attempt to reduce them to a state of slavery. They became tributary to the chief and his band.

Now the conquest of Gaul (and of Italy) was, as I have already shown, not a sudden act, or accomplished in a short time.

Each barbarian, in his inroads, contrived to attach to himself all that portion of the land which surrounded his principal establishment. That is to say, he claimed the right to receive from the old inhabitants payments or duties of various kinds. This process was constantly going on during the repeated invasions of the barbarian settlers.

I have already pointed out how the greater part of the alods disappeared under these violent attacks, and how powerless the lords were to repress them.

The same causes which led to the destruction of the alods, or to their conversion into benefices, acted in the same way, with still more force, upon the benefices.

The great proprietors, rapacious and lazy, often found it more advantageous to reduce their neighbours to the condition of tributaries than to strip them of their lands. Many royal edicts were published with the view of putting a stop to the exactions thus imposed, but without effect. For the power of the Crown was too feeble to contend against the chiefs, whose obedience was little more than nominal.

Moreover, under the custom of commendation many proprietors had changed their alods into benefices, and a large number of the weakest had fallen into the condition of tributaries.

They came before some powerful neighbour, holding in their hands not only a branch or a turf, but the hair that fell over their foreheads, and humbly submitted their persons and their property to his will. This hard fate was at first confined to the old inhabitants, but before long it extended to the new settlers themselves, and if

the individual was too weak to resist the demands of the stronger, it mattered little whether he were a Frank or a Roman.

At last many of the great proprietors, not satisfied with the concessions which they made by way of benefices to those whom they wished to attach to themselves as vassals, distributed a large portion of their lands to the ordinary cultivators who were living on them, in return for a money payment or for personal services of various kinds.

This distribution assumed many forms. Sometimes the cultivators were freemen, sometimes merely serfs; some of them were ordinary farmers, some were tenants with a power of transmitting after death the right of cultivation which they had enjoyed during life. This accounts for the peculiar terminology applicable to this class of tenancies; as for instance, *mansus indominicatus*, *ingenuilis*, *servilis*, *tributalis*, *vestitus*.<sup>1</sup>

It also partly accounts for the number and infinite variety of dues, claims, and rights in later times comprised in the term "feudal." The greater portion of these had their source in the primitive relations arising out of

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<sup>1</sup> *Mansus* is a vill, or the dwelling of the family. *Indominicatus* means a vill held by the occupier as his own demesne. *Ingenuilis*, a vill or locus that was cultivated by men of a free condition, or not obnoxious to any servile duties. *Servilis* was one that was cultivated by slaves or by husbandmen who were subject to rent and other duties of a servile nature. *Tributalis* was a vill or locus that was subject to a tax imposed by the king for war purposes and for the public demands. *Vestitus* was one that was cultivated, as opposed to *absolutus*—uncultivated.

the tributary land between the owner thereof and the more powerful proprietor under whom he held it.

It may therefore be fairly inferred that at the end of the tenth century the larger number of cultivators farmed their tributary lands. An inference deducible, not only from the instances to be seen in the historical and legal documents of the period, but from this fact, viz., the steadily increasing concentration of manorial property, and the immense extent of the domains acquired by the great and powerful chiefs.

The assertion that force, especially strong force, was at this time the sole guarantee of complete property rights needs no proof. The story of this period shows us that the want of strength compelled many of the weaker class to submit to be reduced to the position of mere usufructuary tenants, with a title more or less precarious.

Landed property, like personal property, is of little real value to the owner if his rights in and over it are not independent, if he is unable to dispose as he pleases of what belongs to him, and if his tenure and possession are not fully guaranteed and safeguarded.

When the conditions of social life are such that property rights rest on a safe and sound basis, are protected by law, and are not secured merely by the power and ability of the holder to keep them, the inclination of the proprietors is to separate, not to congregate, because the desire of every individual owner then is to betake himself to his holding, safe in the assurance of peace and security.

On the other hand, when, owing to the absence of legal authority, and to the irresistible influence of force, the

weak are at the mercy of the strong; and when the means and opportunity for the accumulation of land by the strong (small by comparison though their numbers may be) are always at hand, that accumulation will necessarily take place. This was the tendency of things from the fifth to the tenth centuries.

Throughout this range of years property in land was a source of danger to all who were unable to repel force by force. The owner was always exposed to the fear of attack, plunder, and dispossession from some more powerful neighbour.

On the other hand, the position of the usufructuary tenant, though of an inferior and meaner quality, was a safer and more agreeable one.

It may be that his title was less dignified than that of an actual owner, and that he had to share with a powerful proprietor the produce of the soil; but then he felt himself safe and secure under the protection of that personage, his life and his property were free from the risk of attack, and he could work on in comfort and content.

So it came to pass that the number of proprietors who voluntarily surrendered their rights of ownership constantly grew larger; but then, as these rights had no substantial existence and no real safeguards, such surrender was a matter of but little concern.

Gradually, then, owners of land became tenant cultivators, and thus the way was prepared for another revolution in the history of property rights; and it is this.

As this system of tenant-cultivation increased in quan-

tity and grew in favour, the cultivators in time acquired stronger and better rights in respect of the lands they were improving; and as the conditions of life and society improved, these rights were moulded into a more consistent shape.

Gradually it became difficult to consider the cultivator as a mere temporary farmer, or to eject at will one whose father and grandfather, and others before them, had laboured on the lands and improved them under the eyes of the lords, and ancestors.

Thus labour, strengthened by continuous enjoyment, re-acquired what violence had originally seized; and so, whilst the old proprietors had been constrained to submit to the necessity of becoming mere cultivators, later on the cultivators recovered their position as proprietors.

This, however, was not the work of a few years, but of many generations. It was, as I have already noted, the land question that effected important and beneficial changes in the development and progress of the social state.

## LECTURE VI.

### *KING, CLERGY, AND NOBILITY.*

A Notice of some Political and Social Institutions that have acted on the Later Constitutional Life of Europe; *e.g.*, Royalty, the Church and the Clergy, the Nobility—Introduction of the Notion of Fidelity or Fealty—Formation and Growth of the Class of the “Leudes”—Its Influence on the Social and Political Group—The Clergy and their Rise to Power—Reasons therefor—Rise of Free Institutions, Aristocratic Institutions, and Monarchical Institutions—Their Conflicts and the Result thereof—Review of the History of Social Progress from the Fall of the Roman Empire down to the Introduction of Feudalism.

I HAVE thus given you a detailed account, in its regular and successive stages, of the changes in the possession and tenure of land from the earlier settlement of the Barbarians in Europe down to the time when the feudal system makes its appearance; and thus I have prepared the way for an examination of that system.

But before I proceed to this part of my work, I must exhibit the special effects of the different facts we have been considering upon the social condition of Europe. Now this leads me to an inquiry into some very important features connected with the composition of the modern social group, and to a notice of some political and social institutions that have worked with great force upon the formation of the constitutional life of Europe.

I propose to say something now about royalty and nobility; about the rise to power, and the causes there-for, of the clergy; and about monarchical and political institutions. All of these necessarily present matters of no little interest in the history of the settlement of society in our own country.

Some pages back I drew attention to the classification of the members of the old Frankish community, following upon their settlement in Gaul, and stated it as resolving itself into the chief, the superior class (*i.e.*, the leudes, the antrustions, and fideles), the clergy, the enfranchised class, and the slaves.

I am now about to trace the steps by which from the chief, converted in time into king, grew the notion of royalty; how from the leudes came the notion of an aristocracy or nobility; and how the clergy attained a power and importance in the social order as decided as it was remarkable. I have already told you who the leudes were, the *men* attached to their chief, swearing fidelity to him, and called in consequence fideles, and from the trust reposed in them antrustions.<sup>1</sup>

It is hardly necessary to say that an institution of this sort does not owe its origin to a time when society is firmly established, and when civilization has welded together in one homogeneous whole the different parts and branches of the social circle.

Men who are living under established laws, and are conscious of the protection of a just and strong govern-

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<sup>1</sup> This term, antrustion, it should be noticed, was specially applicable to the king's fideles.

ment, know that they can place reliance upon the protection accorded them by the government and the law. There is no need of special oaths of fidelity.

It is in times of disorder, when the individual members of a community are few and scattered, when law has little or no force, and when might is stronger than right, that the idea of a strengthening tie (such as is engendered by an oath of fidelity) arises.

Its advantages are twofold. It gives confidence to the scattered and weaker individuals who repose their trust in a chief possessed of courage, skill, and power; and it adds to the strength and power of this chief himself by the addition of a number of followers bound to him in terms of solemn assurance. The more vigorously he exerts himself in support of his trusting followers, the larger and more lasting is his influence, not only over them, but as against some other chief; and the greater the confidence impressed upon his fideles by their oath of fidelity, the more secure and settled will be their social position and condition.

The advantages derivable from the establishment of fidelity and trustship were a constant and increasing reason for its extension, and therefore the history of the Barbarian settlement in Gaul shows beyond all doubt the tendency to the steady and constant increase in the class of the *leudes*.

By it a check was given to the inclination to disperse and live in scattered dwellings, the great proprietors became the centre of new associations, based upon the engagements of man to man, and through the bond of fealty given and received between the chief and his faith-

ful followers society obtained and kept up its organisation.

From the fifth century, then, the extension of this class of social relations became more marked, the powerful leaders found themselves necessitated to add to the number of their leudes, and the freemen were compelled to enrol themselves as the leudes of the chieftain.

In A.D. 587, Gontran and Childebert stipulate "that they will reciprocally avoid all attempts to detach the leudes of each of them, and will not accept the service of any who have left the ranks of either one or the other." Marculf gives us the formula by which a man of rank and note places himself with his own companions in the service of the king as one of his leudes.<sup>1</sup> Charlemagne publishes express enactments on the subject.

The concession of benefices, as we have seen, was the principal means of gaining and attaching these leudes, but it was not the only means. Public offices and court offices were equally efficacious in that direction.

There is reason to believe that the powerful leaders and the chiefs of a band established in this or that particular district were the first counts of each district, and that in the times which immediately followed the conquests, the kings did not create these officials at their own will. There is every indication that the title was conferred on the individual whose special pre-eminence in this or that locality led to his elevation, and that thereupon he took his place among the royal leudes.

But when the power of the king, or rather that of the

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<sup>1</sup> Marculf, "Form.," lib. i. cap. xviii.

leudes who surrounded him and lived near him, was enlarged, the public offices became benefices of another kind, which were distributed by the royal hand with the sole view of compensating his fideles, or of gaining fresh ones.

As regards the places at court, they were numerous. The organization of the palace in the days of Imperial Rome offered a charm of novelty and vanity which the then barbarian kings were unable to resist.

A count of the palace, a great referendary, a great seneschal, a great marshal, a great chamberlain, or door-keeper, the office of butler, of falconer, and others of a similar nature, were soon looked upon as necessary appendages of royalty among the barbarians, and the creation of these offices became a sure and easy mode of attaching to the king the most important personages among his followers.

The attractions of the Court, with its feasts, its comparative splendour, were too great to be resisted, and so the royal palaces of Metz, Soissons, and Paris were thronged with aspirants for honours, and became the resort of all, even the most powerful chiefs. Thus the number of the king's leudes increased from year to year.

In the same line did the great proprietors act each in his own district. They also had benefices to distribute, and they also kept up a show of splendour, creating and assigning among their followers similar offices to those of the royal circle.

The mansion of each chieftain afforded similar attractions, though on a smaller scale, to those of the court; and thus by the same form of fealty the number of the chief's leudes was constantly being enlarged.

Now it is precisely from this cause and out of this class that modern nobility has its origin. Between the fifth and the tenth centuries there is no evidence of the existence of any separate noble class among the Franks. The idea of perfect equality among all the freemen of that nation was for a long period a persistent one, and the notion of anything like hereditary claims to honours was very slow in making its appearance.

Thus was formed the class of the *leudes*, neither setting store on hereditary descent nor claiming any legal condition beyond that of freedom. Assembling round their chief, whether he were the king or a great proprietor, they placed their services at his command in exchange for the benefits conferred on them by his protection.

By virtue of their title of *leudes*, they possessed no special importance, no public existence, and no elevated rank in the State. They were simply a portion of the public with certain rights and with certain powers. They became the men of one particular man, acquiring no rights save such as he conceded to them, and contracting no duties except in relation to him. Rights that were precarious, duties that were uncertain, frequently violated and often misunderstood, but rights and duties that gave rise to special associations which alone were capable in the midst of the confusion and lawlessness of the times of being moulded into stability.

In the midst of this confusion and uncertainty, following on the conquest, the fusion of the invaders and of the original inhabitants progressed, and the Roman, on attaining freedom and wealth, took his proper place among his Frankish neighbours.

Gradually the difference between the two sets of people disappeared, and then the general history of Frankish Gaul is nothing more than that of the king and his leudes; the history of each locality, that of the dominant chief and the leudes who rallied round him.

Feudal society, then, finds its origin in the leudes. Their place lies between the wandering companions of the German chiefs and the vassals of the Middle Ages, just as benefices did between the presents of horses or arms and the fiefs; and so it is that the territorial acquisitions and the personal status, as well as the institutions, political and local, travel on the same lines.

I propose now to speak of the ecclesiastical body, the clergy. For soon after the conquest, the bishops and the heads of the great ecclesiastical corporations—the abbots, priors, etc.—took their place among the leudes of the king.

Before the invasion of the barbarians, as we have already seen, the power of the clergy was the sole remnant of power in the midst of the ruins of the Empire. It grew in strength every day.

As proofs of this, the history of the times points to the wealth of the churches; the influence of the clergy on the superstitious or pious sentiments of the populace; and to the administration by the clerical body of municipal matters which had almost entirely fallen into their hands.

These are direct and positive proofs, but there is another proof of an indirect nature that marks still more clearly the ever-prevailing influence of the ecclesiastics. I mean the eagerness with which the dignity of bishop was sought after.

No office of rank, no position has at any time been the subject of so much intrigue and so much violence as the office and position of bishop in these early days. Nay, the vacancy in an episcopal diocese was sometimes a cause of war.

Thus we read of tumultuous meetings and assemblies of armed bands, called together to assist the episcopal nominees of Hilary, Archbishop of Arles, against the bishops whom he had, contrary to all law and in defiance of justice, ejected from their dioceses. So we read of a reverend father in God invading with an armed force the place where he should have preached the Gospel of peace. So, too, Athalric, king of the Visigoths, fulminated his edicts against the artifices and manœuvres of candidates for a bishopric. In a word, no office seems to have been so much an incentive to fraud, violence, and corruption as that of the episcopal dignity.

Now what were the causes of the powerful position that the clergy attained ?

One would have thought that the destruction of the Empire by the heathen bands of the barbarian invaders would have carried with it grave injury to if not extermination of the members of the christian faith; but so far from this being the case, the establishment of the Germans in Gaul actually increased their influence. Whatever the causes which led to their conversion to the christian faith, "however capricious and accidental," to use Gibbon's language,<sup>1</sup> "were the motives which influenced the reason or the passions of the barbarian

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<sup>1</sup> Gibbon's "*Décline and Fall*," ch. xxxvii.

converts—a dream,<sup>1</sup> an omen, the report of a miracle, the example of some priest or hero, the charms of a believing wife, or, above all, the fortunate event of a prayer or a vow which, in a moment of danger, they had addressed to the God of the christian—the result is undoubted, the belief in the christian tenets achieved a full and complete conquest over the barbarian settlers. The advantage of temporal prosperity had deserted the pagan cause and passed over to the service of christianity. Before the age of Charlemagne the christian nations of Europe might exult in the exclusive possession of the temperate climates, of the fertile lands, which produced corn, wine, and oil, while the savage idolaters and their helpless idols were confined to the extremities of the earth—the dark and frozen regions of the north. Christianity,” continues the author of the “Decline and Fall of the Roman Empire,” “which opened the gates of heaven to the barbarians, introduced an important change in their moral and political condition. They received at the same time the use of letters, so essential to a religion whose doctrines are contained in a sacred book; and while they studied the divine truth their minds were insensibly enlarged by the distant view of history, of nature, of the arts, and of society. In the most corrupt state of christianity the barbarians might learn justice from the law and mercy from the gospel; and if the knowledge of their duty was insufficient to guide their actions or to regulate their passions, they were sometimes restrained by conscience and frequently punished

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<sup>1</sup> See Appendix, Note H.

by remorse. In the days of paganism the priests of Gaul and Germany reigned over the people and controlled the jurisdiction of the magistrates, and the zealous proselytes transferred an equal or more ample measure of devout obedience to the pontiffs of the christian faith. The sacred character of the bishops was supported by their temporal possessions. They obtained an honourable seat in the legislative assemblies of soldiers and freemen; and it was their interest, as well as their duty, to mollify, by peaceful counsels, the fierce spirit of the barbarians. The perpetual correspondence of the latin clergy, the frequent pilgrimages to Rome and Jerusalem, and the growing authority of the popes, cemented the union of the christian republic, and gradually produced the similar manners and common jurisprudence which distinguished from the rest of mankind the independent and even hostile nations of modern Europe."

Such is the testimony which a writer, always supposed not to be too friendly to the dogmas of the christian faith, and never regarded with much admiration by its warmest champions, ascribes to the spread of christianity and the causes of its success among the barbarians.

There are other reasons for that success, which I will here add.

If the clergy required the countenance of the conquering invaders of Europe, these conquerors, in their turn, required the help of the clergy.

One immediate, and for some time continuous, effect of the invasion was, as I have already pointed out, the dissolution and destruction of order, law, and the old

form of government. The ancient officials were thrust aside, the people, deprived of the benefits of law and order, were sunk in misery and poverty. The new settlers, or rather conquerors, reducing the conquered territory to a desert waste, found no bodies of individuals capable of continuing even the semblance of social organization; and but for the intervention of the clergy, society itself must have come to an end.

The clergy formed a corporation in perfect union amongst themselves, conscious of their own strength, firmly persuaded of the justice of the rights they assumed to claim, and by their very unity assured of a continuity of life. They alone were able to preserve the social body from utter extinction, because they alone were possessed of common interests and institutions.

The bishops, and the spiritual heads of the monasteries maintained a correspondence on fairly equal terms with the barbarian kings. They entered into and formed a not unimportant portion of the assemblies of the leudes; and at the same time the Roman population rallied to them in the cities. They acquired immense property through benefices, legacies, and gifts of all kinds. They took their place among the leaders of the conquering tribes, and at the same time they retained in their own domains the use of the Roman jurisprudence, and obtained immunities which, as I have shown you, they employed for the benefit of the Roman cultivators of the soil.

Thus they formed the one single body of the old stock which was able to hold its own alongside of the new race. They became the one single part of the new aristocracy which was closely bound up with the older

people. So they were in effect the bond of unity between the two sets, and their power was a social necessity as much for the conquerors as for the conquered.

When, then, the necessity for their agency had borne fruit, when the power of the bishops was firmly established, when the wealth and possessions of the churches ceased to be exposed to the constant pillage that resulted from the earlier devastations of the invaders, the barbarians themselves turned their attention to the dignity of the episcopal office. I need not cite instances of this; they are plentiful in the old annals.

It is enough to say that bishoprics were an object of ambition eagerly coveted; and thus it came to pass that as soon as the bishops succeeded in obtaining a footing among the leudes, the leudes themselves claimed and obtained the sees; and so the fusion of the two races, the Roman and the German, was worked out through the fusion of these two social classes; and this in its turn, at a later period, helped on the formation and establishment of the aristocracy of the feudal *régime*. The development of this was materially assisted by the direct intervention of the royal authority in the nomination of bishops and in the collation to bishoprics.

I need not pursue the history of the ecclesiastical body further, nor examine in detail their civil position. My object has been and is to describe, as far as I can, the political as well as the social state of Europe during the centuries under review. I will content myself with referring only to the direct consequences of the great influence of the clergy, obtained as it was in the manner I have described.

The times, as I have shown, were marked by violence, lawlessness, and disorder. The misery of the weaker portion of the community was extreme; the exactions and superiority of the strong and powerful were resistless.

In the midst of this savage and anarchical condition of life, the clergy alone recognised a sentiment of a higher and holier nature than material force; namely, the influence of moral force. They alone appealed to a law that extended its benefits and protection to all, that pleaded for the poor against the rich, that admitted and sanctioned rights, duties, and mercy.

This was the secret of the influence the clergy obtained; and though they themselves were not free from—nay, were too often subject to—many of the evil qualities of human nature—among them certainly cupidity and lust of power—still, they did exert themselves to improve the lot of those of their weaker fellow-creatures with whom they came into contact, and did address themselves to the work of cultivating and improving their social and moral life.

Recognised as benefactors by the poor and the weak, and acting upon the ignorance and superstition of many of the stronger portions of the community, they succeeded in enlarging their own influence, and in adding to their own wealth and territorial power.

By the principles of morality which they certainly did strive to inculcate, as well as by the position in the State and in the country which was conceded to them, they preserved European society from the imminent risk of utter destruction.

From the consideration of the origin, causes, and effect of the rise of the ecclesiastical body to power and in-

fluence in the state, and its direct effect upon the formation and development of social life and order, I proceed to an examination of the local and political institutions visible in Europe from the fifth to the tenth centuries. The history of these institutions will show us two tendencies—one to the decay of freedom, the other to the rise of a hierarchical aristocracy of proprietors, accompanied with a condition of slavery among the lower classes.

Soon after the establishment of the barbarians in Gaul three separate institutions emerge from the chaos of the times. Varying widely in their forms, their principles, and their effects, they existed together for some time, but eventually came into opposition and conflict. For five centuries this opposition and conflict continued, until at length the superiority of one of them asserted itself.

In their primitive associations, as I have more than once pointed out, the barbarians, whether in their tribes or their warrior bands, lived together and acted together. Every warrior was a citizen, every individual was free and independent. No important enterprise was undertaken without the consent of the majority. Military expeditions, judicial sentences and decrees, business of all kinds, were debated and decided at the general assemblies. Common interests and deliberation in common was the work of the whole community, and the outcome was the rise and formation of free institutions.

But another notion, not unusual even in the rudest forms of ancient society (that of patron and client), appeared at a very early stage of old German life. At first the chief most fitted by his bravery or renown to

demand it, claimed and received the assistance of his companions in his expeditions. They marched under his orders and acted under his guidance. Then these wandering chiefs were transformed into proprietors, their followers receiving benefices from them, and becoming beneficiaries or vassals. This produced a more complete dependence of the inferior on the superior, and a stronger tie between them was thus formed.

Soon the influence of the chief became a power, and his patronage a jurisdiction, and soon too there grew up a system of aristocratic institutions, wherein inequality was a recognised idea, and the subordination of man to man an admitted consequence.

In course of time royal authority exerted its influence. Slight, and confined within very narrow limits before the immigration of the tribes from the farther side of the Rhine, after the invasion and the conquest it necessarily grew in strength and weight. For the conquered people it was the government. It received the sanction of the Church. The principle of hereditary succession attached to it, and, as combined with these advantages, the king was the richest proprietor of all, the change to a complete monarchical institution attracted and obtained a decided recognition.

Thus very early in the history of social order in Europe free institutions, aristocratic institutions, and monarchical institutions appeared side by side. So too appeared three forms of national administration: that derived from the assemblies of the freemen; that claimed by the proprietors in their own localities; and that claimed by royalty. There were also three lower classes

in the social organization—citizens, vassals, and subjects.

These three rival institutions were never united, were constantly and incessantly at variance. The first to give way was the system of free institutions. Between the other two the strife continued. At the end of the Merovingian dynasty, the monarchical system was at the point of death. Charlemagne arrested its fall for a while, but his successors were unequal to the contest. The aristocratic principle remained master of the political situation, and so at the end of the tenth century there was left neither citizen nor subject. Lordship and vassalage or serfdom was what remained, and feudalism became the dominant idea.

I have now brought you down to the period in the social history of Europe when feudalism was established and became a recognised political fact, or to use the words of the great writer whose thoughts and words I have all along made use of (M. Guizot), I have traced out "the slow and laborious birth of the feudal system."

I propose now to examine its true political character, and to attempt to exhibit as precisely as I can what feudalism was, considered as a system of social organism and of government.

And here let me briefly recount what I have done, or endeavoured to do, in the review I have submitted to you of the history of society from the fall of the Roman Empire to the introduction of feudalism.

Rome, as I have pointed out, was a mere municipality, a corporation. The distinctive character of Roman government is that it was a combination of municipal institutions.

In Italy nations were nothing more than confederations of cities; and what we have seen in the preceding narrative of Roman social life and government has been the almost exclusive preponderance of cities and the absence of country population and dwellings.

The conquest of the world was easy; to govern it and weld it into one whole was difficult. Hence, one of the causes that led to the establishment of the empire was the need of a concentrated form of government. The empire strove to unite and bind the scattered society. But as it was necessarily despotic, a strong tendency to centralization marked its progress. One or two emperors (notably in the beginning of the fifth century) tried to introduce a representative system, though without any abiding results, and so for a time the spirit of localization and of municipalism reappeared. The Roman world had been formed of cities, and to cities it returned.

Thus there were two notions which passed from Roman civilization into the forces which had subverted it: (1) The system of municipal corporations, together with a general civil legislation, the principle of liberty and order; (2) the idea of imperial majesty, *i.e.*, absolute power, the principle of servitude.

Then came a moral notion, a moral influence, that of the church, bringing with it the severance of temporal from spiritual power.

And then followed the sentiment of personal independence, a direct consequence of the invasion of the barbarians, whose characteristic was love of individual liberty.

To them we are indebted for the desire for personal

independence, for a determined inclination for personal liberty. To them also we owe military patronage, the origin of that aristocratic organization which at a later period grew into the feudal system, the germ of this development being the attachment of man to man, the *fidelity* which united individuals.

Between the fifth and the tenth centuries feudalism was gradually but persistently working its way. In the tenth century it became predominant. The universality of its adoption at that period would seem to indicate the necessity for it, for wherever barbarism ceased feudalism became strong.

When I say that feudalism was universal, I limit the proposition to its form only. The feudal form was universal, but the feudal principle was not so. Feudal despotism was always hateful to the county people, for it is the authority of man over man, the dominion of the personal, capricious will of an individual.<sup>1</sup> The attempt was made to change the obligations by which the possessors of fiefs were bound (*i.e.* of service and protection), their duties and sentiments, into laws and institutions; but these laws and institutions had no guarantee save force. The only political right which the feudal system acknowledged was the right of resistance. The possessor of a fief within his domain was invested with all the rights and privileges of *sovereignty*; he inherited them with the territory; they were a matter of private property.

There was good reason, then, as you may well perceive,

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<sup>1</sup> For the burdensome character of the feudal services, see Appendix, Note I.

for the hatred which the principle of feudalism inspired. This hatred was never appeased, and grew with the increasing tendency to exactions on the part of the lords. This was an agency of itself sufficient in time to establish a successful opposition to feudalism; but there was another agency at work which was even more effective,—that was the rise of free cities.

Corporate cities had, as I have shown, formed the important feature of Roman political life. They had never been completely destroyed, as I have also shown, during the whole period of anxiety and confusion consequent on the barbarian invasions. They had been kept alive by the influence of the clergy; and so at the close of the tenth century, and during the eleventh and twelfth centuries, we find them making a figure in history.

Prior to the eleventh century corporate cities did not play any important part in the great drama of the European world as connected with modern civilization and with the development of social life. After the eleventh century they did, for then we meet with grants of charters to cities, and these charters are positive treaties of peace between the burgesses and their lords, engendering, first, a sense of security within their walls; second, a strong appreciation of freedom, and a strong power as well as spirit of resistance to feudal force; and third, a struggle of classes, a struggle which constitutes the very fact of modern history, and of which it is full.

## LECTURE VII.

### *RISE OF FEUDALISM.*

Feudalism, its Rise and Progress—Its Characteristics—Its Influence on Later Events—Contrast between it and other Forms of Government—Causes of the Popular Hatred towards it, and of its Ultimate Decay and Fall—Difference between the Feudal Aristocracy of France and the Barons of England noted.

I AM now on the threshold of feudalism, and on that subject I propose to dwell at some little length. "Feudalism," says Bishop Stubbs,<sup>1</sup> "was by its historic origin a growth distinctly Frank." The word "feudum," as he points out, is not found earlier than the close of the ninth century.<sup>2</sup> The actual development of feudalism may be traced step by step, under Frank influence, from its first appearance on the conquered soil of Roman Gaul to its full establishment in the jurisprudence of the Middle Ages.

As regards both tenure and government, so far as it existed in England, it was brought full-blown from France. In the form which it has reached at the Norman Conquest, it may be described as a complete organization of society through the medium of land tenure, in which,

<sup>1</sup> "Constitutional History of England," vol. i. p. 286.

<sup>2</sup> See Appendix, Note K.

from the king down to the lowest landowner, all are bound together by obligation of service and defence—the lord to protect the vassal, and the vassal to do service to the lord—the defence and service being based on and regulated by the nature and extent of the land held by the one of the other.]

In states in which feudal government has reached its utmost growth, the political, financial, judicial, nay, every branch of public administration, is regulated by the same conditions. [The central authority is a mere shadow of a name.]

{ Transported to England in the eleventh century by the Normans, and firmly rooted there till the middle of the seventeenth century, the influence of feudalism on the habits and customs of this country, and on its social order, was undoubtedly extensive; yet the revolt against that influence was so decided and so impressive as to lead to its destruction in the manner I have above pointed out.

Great as were the evils and mischiefs that resulted from it, it still had some countervailing advantages, and therefore it will not be out of place if I attempt to exhibit the moral and political effect of feudalism upon the social life of Europe; and what I propose to do is to translate a large portion of M. Guizot's fifth essay, "On the Political character of the feudal system," for no author that I know of has discussed the subject with so much learning, with so much sound criticism, and so eloquently as that great writer.<sup>1</sup>

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<sup>1</sup> "Essais sur l'Histoire de France," V<sup>e</sup> essai, p. 290 (tenth edition, 1860).

In the tenth century men and lands in France were shared out among the possessors of fiefs as they had been in the sixth century among the barbarian conquerors. Gauls and Franks, conquerors and conquered, are no longer visible; everything was displaced, changed, and confused. But the conquest, the long disorders that ensued, the struggle between different political tendencies, had produced this result, that a certain number of men under the authority of lords over vassals, established each in his own domain and united each with each by feudal ties, were the masters of the population and of the soil.

This domination was not universal nor everywhere regularly compact. Some proprietors of alods remained outside the feudal circle, whilst among the mass of the people who possessed neither alods nor fiefs, the condition of life was varying and unequal.

In one place they were mere serfs, in another they enjoyed some remains of liberty, some fragments of proprietary rights.

Again, in this almost deserted corner or that forgotten district, a kind of independence existed due simply to the isolation of the place.

Such were the disorder of the times, the feebleness of the native dwellers, the difficulty of communication, the ignorance of the masses, the want of cohesion and order in the institutions, that there was opportunity for any and every sort of variation, chance, and anomaly.

But through all these disturbing elements, in France the feudal principle made steady and decided progress. From time to time the external limits of feudalism became more extended, and its internal power more

decisive. From time to time the proprietors of fiefs advanced towards the exclusive possession of territory and of dominion.

What, then, was the special nature of this aristocracy? What was the political character of its government?

[It was a confederation of little sovereigns, of small despots, unequal among themselves, and possessing and owing each towards the other rights and duties, yet invested in their own domains, over their own immediate subjects, with absolute arbitrary power. This is what feudalism really was, and this is what distinguishes it from every other aristocratic form, from every other kind of government.]

Despotic and aristocratic governments have had their day on this earth from time to time, and the history of the world shows us nations ruled over by a single individual, by a college of priests, by a body of patricians. But not one of these resembles in any respect the feudal form.

Where the sovereign power has been placed in the hands of a single individual, it is very possible and probable that the condition of the people may become servile and miserable.

Feudalism presents a better aspect than this, as I will show presently; yet still the condition of things under despotism has, it must be admitted, appeared less heavy and more acceptable to the governed than that of the feudal rule. The reason is, that in great monarchies those below the head of the subject body are able to acquire among themselves a kind of equality, and have met with a certain amount of quiet and rest. Granted

that the equality may not be a matter to be proud of, nor the quiet and rest always and altogether satisfactory, still the people are in some situations and in the last period of their existence not absolutely discontented with their lot.

From the tenth to the thirteenth centuries, liberty, equality, and peace were all wanting to the inhabitants of the Seigneurial domains. Their sovereign was at their door. Not one of them was too obscure for his notice or too far removed from his power.

Of all tyrannies, the worst is that which is thus able to overawe its subjects, and which can survey from the seat of power the full extent of its authority. The caprices of the individual are then displayed in all their extravagance, and with irresistible promptness. Then it is that the inequality of the conditions of life comes rudely to the front. Wealth, power, independence of control, with all their proud advantages and influences, are visible at every moment in strong contrast with poverty, weakness, servile dependence.

To the dwellers in the feudal domains there was very little hope of rest and quiet. Incessantly compromised in the quarrels of their lords, and ever a prey to the devastating attacks of the rivals of these lords, they led lives more harassing and more precarious than those of their lords. They had to contemplate the never-ceasing prospect of war, and to submit to the oppression arising from unrestrained force and absolute power.

If between the feudal form of government and that under a despotism there was this wide distinction, the difference between the feudal form and that of a college

of priests or a senate of patricians is equally marked and distinct.

In the latter the mass of the population is ruled and governed by a united aristocratic body. In the former the governing body is not united. It is separated into individual members, each one of whom is ruler and administrator on his own account over a certain number of dependents.

Moreover, under a priestly government the power of the governing body is based upon forms of faith and articles of belief which are shared in common by the mass of the governed, and as in common forms of faith and belief thus shared there is a moral tie, so a sentiment of equality on the part of the governed arises out of it, producing a tacit adhesion to government itself.

Under the patrician form, composed as the council or senate is of several personages, their deliberations necessarily are free from the capricious and arbitrary decisions to which a despotism is subject, and as their sovereignty is collective, the measures discussed by them are of a more general nature. Besides, in such a body there must always be cliques, factions, parties; and each set, striving to conciliate the favour of the people, may not be indisposed to discuss measures likely to result in the improvement of the masses.

Thus the people themselves may be able, through the rivalries of the different factions, to obtain some amelioration of their own lot.

But the feudal form of government was not, strictly speaking, an aristocratic form. It was not a council or senate of kings. It was a collection of individual despots,

aristocrats, it is true, but aristocrats isolated each from the other, each supreme as sovereign and legislator in his own demesne, but each entirely independent of the other, and answerable for his conduct towards his subjects to no one.

Can we be astonished, then, at the hatred of the people for their feudal rulers, a hatred aggravated by the consciousness always borne in upon them that their condition was a serfdom as galling as it was continuous?

The despotic form was there as conspicuous as under an absolute monarchy, and the claim of privilege was asserted as vigorously as under the most concentrated aristocracy, both of them exhibited in the most offensive and crude shape, and both exercised by an individual who was never absent, was ever close at hand, and never bound or inclined to summon his equals to the common consideration of matters that concerned the welfare of the whole body.

Passing from the subjects to the rulers, from the nation possessed to the sovereign power, another feature is noticeable. Here we see liberty, rights, guarantees, which not only offered honour and protection to those who enjoyed them, but which from their very nature and tendency opened a door for a better future to the subject people. For if the feudal form of government has not been wanting either in dignity or glory, so, it must be confessed, it did not condemn its subjects to slavery without offering something like an equivalent, wherein it differed from the theocracy of Egypt, the despotism of Asia, or the aristocracy of Venice. If it oppressed its subjects, it afforded them some chance of enfranchisement.

Now, granting that feudalism did make its despotic character more odious and burdensome by placing the master close to the subject, yet it did also put the inferior near the superior in the sovereign nation, a very efficacious cause of equality and liberty.

The vice of absolute monarchy is the elevation of the sovereign on so lofty an eminence, and the surrounding him with so much pomp as to turn the head of the ruler, and to oppress with awe all his subjects. The sovereign believes himself a god; the people fall down and worship him. Write as eloquently as you may about the duties of kings and the rights of their subjects, your words are thrown away. Facts are stronger than words; for when the inequality is immense, the former easily forget their duties, the rights of the latter are too easily depressed.

But the feudal greatness was different from this. It was simple and accessible. [The distance between the lord and the vassal was slight. They lived together on terms of familiarity, and on the footing of companions.] The superiority was not absolutely unlimited, nor was the subordination absolutely slavish. [Each was necessary to the other, and thus the reciprocity of rights and duties was guaranteed and strengthened.]

To this expansion of domestic life, this nobility of personal services, one of the most generous principles of the Middle Ages owes its birth, viz., "fealty" or fidelity, a principle which marvellously united the dignity of the lord to the devotion of the vassal.

Moreover, the position of the lord, if it was an exalted one, was not an absolutely independent one. The seignior in one fief was often vassal in another. Sometimes, by

virtue of different fiefs, the same personages were in a condition of vassalage as well as of suzerainty. Sometimes also powerful lords admitted duties to smaller ones. Thus the King of France himself, who held his crown only of God and his sword, held lands under several seigniors. Here, then, was a new principle of reciprocity and equality.

Lastly, by the sacredly recognised nature of the interconnection of fiefs, the gap between the lowest and the highest of the feudal proprietors was filled up; and so by degrees the least of them was bound to the king, without running the risk of losing the sentiment of his own dignity which would have been the result had the tie been a sudden and forced one, owing to the inequality thereby produced.

This sentiment, which even in social bodies that differ widely from the feudal idea in principle and form is the surest bulwark as it is the noblest product of liberty, is largely indebted for its development and its consistency to another cause.

We have just been considering, so far as the subject nation is concerned, the results of the dispersion of the citizens, the government being administered not as for one collective whole, but for the special individual members of the body. The people suffered from this. The feudal aristocracy also lost much in the matter of cohesion and permanency. But the possessors of fiefs gained in respect of independence and personal dignity.

The power and glory of the Roman or Venetian senate acted upon the power and glory of the Patricians. Each of them had his own share in this collective greatness.

But he owed his own importance to the particular body to which he belonged, not to himself.

In the feudal aristocracy, on the contrary, everything was individual and personal. From himself alone, not from the corporation of which he was a member, each possessor of a fief drew his strength and his importance. Isolated in his domains, the task fell on him to maintain himself there, to extend his power, to watch over the safety of his subjects, his faithful vassals, and to punish those who failed in obedience to him or to their oath of fealty. The ties which united him to his superiors or to his equals were too weak, the guarantees too remote and too slow of accomplishment, to warrant him in trusting his fortunes to their hands.

[The result was a feeling of strong and proud individualism, which was the distinguishing characteristic of feudalism in its highest aspect.] Hence the feudal group was a collection of scattered citizens, each one of whom, always ready for battle, and followed by his own troop or entrenched in his own stronghold, watched over his own safety and his own rights, and depended more on his own courage and renown than on the protection of any public body or power.

Such a condition of things wears rather the appearance of war than of social life; but it stirs into action individual energy and dignity, and out of it social life may emerge.

Thus we soon perceive the strong and increasing growth of social life out of and in the midst of these feudal habits, turbulent, oppressive, and odious as they were.

It took France five centuries to escape finally from barbarism. During these five centuries all conditions of private life, all public institutions, were precarious, restless, and incessantly exposed to uncertainty and violence. So much so that it is impossible to discern any general principle, or to note any sign of real progress.

Across this long and gloomy anarchy, the only notable fact is feudalism establishing itself at the expense, sometimes of liberty, sometimes of order; not polishing and perfecting the social state, but existing as the sole system which was able to acquire any degree of firmness—a necessary makeshift, as it were, failing anything better.

✓ As soon as it struck root, and began to grow, everything wore another aspect. Social life, till then deformed and half-paralysed, received a new being and started on its progress with fresh vigour. Yet almost at the moment of victory, the inroads upon the continuous life of the feudal system began. The lower ranks of the people, as well as the highest of all, were the assailants. 'The mass of the people strove to reconquer some portions of liberty of property and of law, the kings strove to recover their public position, and again to reassert their claims to the headship of the nation.

These efforts were no longer attempted in the midst of the shock and din of diverging systems, reducing both sets of opponents to weakness and anarchy. They came into existence when the feudal system itself was compact, and they were directed against it alone.

⌈ The assailants were no longer mere freemen, holding an unsettled and doubtful position, and defending themselves badly against the power of the chiefs under whom

they tenanted lands which were the relics of their old barbarian independence. Now they had acquired the position of burgesses, farmers, serfs, whose condition was clear and settled, who thoroughly understood the evils from which they suffered, and who were incessantly at work to free themselves from those evils.

The royal head was no longer a mere kingling, uncertain as to his title or the nature of his power, whether a chief of warriors, or the wealthiest proprietor of the locality, or the anointed of the Lord, or the heir of an imperial throne, striving, but without method or order, to rule over independent subjects or exacting leudes, whose efforts were constantly directed to the invasion of his authority, or to his absolute isolation.

Now he has raised himself to supreme rank among the feudal lords, and is aiming, not without success, at lordship over them, and at the substitution of sovereignty for mere seignorial claims.

Thus at the end of the tenth century the enfranchisement of the people was started into life, in spite of the servile condition into which it had fallen, and royalty began to assert and retain power, notwithstanding the weakness, or rather effacement, to which it had been reduced.

The monarchical system, which the genius of Charlemagne had failed to establish, was brought out of obscurity to light by kings vastly his inferiors. The rights and guarantees which the German warriors were unable to preserve were recovered by the commonalty.

Feudalism, then, emerging from barbarism, advanced to greatness and power, bearing with it the seeds of monarchy and liberty. Under the feudal form, and in

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spite of it, the crown acquired authority, the commons and the country people achieved liberty; and yet it was under its very rule that the forces which overcame it were brought into existence, and attained strength and permanence.

It is said that liberty is contagious; yet, as history shows us this maxim is not without exceptions. Nations have not always possessed this happiness. More aristocracies than one have professed to care for the principle of liberty, and have yet condemned their subjects to an unyielding state of slavery.

As a rule this continuous state of serfdom is to be found only in aristocracies in which the principle of excessive centralization and government by a senate existed; for these have been able to oppose an impenetrable barrier to the efforts of the people to obtain their enfranchisement, or able to force their subjects into a humiliating acceptance of the yoke imposed on them.

The feudal aristocracy could not effect either the one or the other of these results. Its ranks were not compact. Its power of oppression and of resistance was not that of a body but that of individuals. Its oppression, if more arbitrary, was less skilful.

Secure shelter from accidents and power of unwearied resistance are possessed only by collective bodies.

A fortunate opportunity or an unexpected revolt compelled a feudal lord to grant concessions. Sometimes he strove to recall them, and was successful; but on the renewal of the outbreak the object of the rebellious vassals was attained.

Even a king could not always remain at war with his

subjects. If the rise in revolt of the inhabitants of the towns and the country against the nobility was a sudden and a general one, victory, as a rule, fell to the nobility; for, being constrained to act together, the compactness of their opposition gave them an advantage.

But where the resistance was not at one point but many, and was local, the chances of success were greater; and this was the kind of resistance that the feudal aristocracy provoked. And it provoked it more than any other aristocracy did, because of its personal and ever-present tyranny. At the same time it was far less capable of overcoming the resistance.

Moreover, the feudal aristocracy was no longer possessed of that power of degrading the people, and retaining them in a state of apathy and moral depravity, which a despotic government and aristocratic senates have so often acquired.

Under no form of administration, and at no period, has the condition of man worn such a hard and contemptible appearance as under the feudal rule; and yet the instinctive appreciation of law, and the sentiment of man's dignity, were stirred into life and strengthened under this rule; and that not in the minds of the individual possessors of fiefs only, but among the vassals also.

This sentiment of dignity a people may lose when under the yoke of a despot, surrounded with all the influence derivable from superstitious awe, and with all the attractions offered by a dazzling superiority enhanced by the possession of unlimited power.

A conquered people may be reduced to hopeless humiliation under the sway of a governing body acting in

unity, and so enabled to compel obedience in every part of its territory and over each one of its subjects. Their intelligence, as well as their existence, succumbs to such a pressure, and the complete submission to servitude is the natural legitimate consequence of such a state.

But when the authority in power is not merely a solitary individual, but is one who is close at hand, when it cannot appeal to a sacred source, or does not emanate from a great body, when its decrees are those of one person to another and direct,—it has no such means as other governing bodies have of destroying every instinct of resistance and every craving for freedom; for no man ever assents to absolute humiliation at the hands of a being of whom, when the two meet face to face, the one thinks he sees in the other an equal.

Such was the position of the feudal aristocracy. It was oppressive, but not very imposing. It was armed with sufficient force to disperse mere peasants, but divested of all that prestige which in the person of an absolute monarch strikes awe into his inferiors.

In the eleventh century noble families had as yet no existence. The proprietors of fiefs could not in support of their claims to rule appeal to the privilege of birth or to the long possession of social advantages. Their superiority was a fact visible and striking, but not a right of ancient date and held in respect.

Thus it happened that the very freedom which they themselves enjoyed was contagious, and that, in spite of their brutal tyranny, the idea of personal dignity was developed around them.

The burgess—nay, the mere villein—learnt from his

lord something which he never would have learnt from an aristocratic assembly or from a king; that is, to rely on his own rights and to defend them. The example of freedom was close at hand, and was a personal matter, just as clearly as the source of oppression.

In his relations with his own suzerain and with his vassals, every lord claimed unceasingly his rights, his privileges, the fulfilment of contracts or of promises. He appealed to the inhabitants of his own domains to help him in maintaining them, even should war be the consequence.

These inhabitants perceived that they also might claim rights or make treaties. They felt the stirring of a moral life, and hardly had a century passed away when, through the general movement of the commons towards enfranchisement and charters, we discover the different sets of people, impatient of their old degradation, claiming and retaining some dignity, some energy, under a system the most arbitrary and harassing of any that the history of Europe has shown us.

At the same time, and owing to other consequences arising out of similar causes, feudalism opened the way, on every side to the progress of royalty, though still exhibiting its distrust for, and still continuing its hostility to, it. Its opposition to royalty was as devoid of cohesion as was its opposition to the enfranchisement of the people.

To each of these opposing elements a senate or council might have presented a firm and solid front, acting continuously, animated by a united spirit, and aiming at one special object.

But feudalism was only able to confront the crown and the people with separate individual resistance, or with coalitions possessing little if any real unity, and little if any duration.

The progressive development of French monarchy is not the result of any political movement or the contest of a central power with an aristocracy defending and losing its liberties.

It is a series of victories, the war of one prince against other princes defending and losing their states. It is exactly here, says M. Guizot, that the fundamental difference between France and England is to be seen, a difference that had an abiding influence on the fortunes of the two countries.

The English Barons were never mere aristocrats. They preserved their rights, and imposed institutions on their sovereigns.

In the eleventh century France was covered with kingdoms whose rulers were conquered, and in their fall lost everything. Feudal relations and feudal duties were the sole tie which united these various princes, and prevented them from being completely isolated; thus the co-existence of these princes on French soil was little more than the phantom of an aristocratic federation. But this connection by its very nature turned out a gain not to the aristocracy but to royalty.

Every aristocratic body is really an association of individuals on a footing of equality. On this footing stood the Patricians of Rome and of Venice, and the Barons of England. The firm union of these forces derived its source from their position and from their rights.

In France the feudal aristocracy was only a hierarchy of superiors and inferiors. A hierarchy founded on the possession of reciprocal rights and duties, and sustained by generous sentiments, but incapable of acquiring the consistency of a political corporation owing to the intense individualism that pervaded every part of its system.<sup>1</sup>

At length, when the king was placed at the head of this confederation, whose dominant principle was isolation and inequality, he became the centre of all feudal obligations, the most distinct and visible object of fealty and devotion.

From that moment feudalism was conquered, and showed clearly its true character. It is evident that its sole use was in affording to social life its first step out of barbarism, but it was totally incompatible with the progress of civilization. It carried in its bosom the germ of no public lasting institution. It wanted the principle of every other form of government, aristocratic or otherwise, and in its fall it left a class of nobles round the throne—aristocrats above the people, but no aristocracy in the state; and this, adds M. Guizot, is what happened throughout the whole of Europe save in England, whose destiny was an entirely different one, owing to causes that were utterly unconnected with any feudal form of government.

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<sup>1</sup> See as to this M. J. Matter "De l'influence des mœurs sur les lois," livre ii. ch. xix. p. 262 (ed. 1843).

## LECTURE VIII.

### *CIVILIZATION AND SOCIAL LIFE IN ENGLAND.*

The History of the Progress of Civilization in England from the Earliest Times to the Norman Conquest—From the Immigrations of the First Settlers down to the Roman Invasion—The Roman Conquest and Settlement—Some of the Results of the Roman Settlement noticed—The Anglo-Saxon Period—War between the Angles and the Saxons—The Reigns of Edwin, Penda, and Offa referred to.

I HAVE now brought the inquiry into the rise and progress of social life in England down to the introduction and establishment of feudalism. Hitherto my aim has been to show you the history of social life in other parts of Europe than our own country, and in doing this I have endeavoured to place before you its various fate and fortune, and its shifting aspect from the fall of the Roman Empire down to the eleventh century.

The way has been cleared for the examination of the subject so far as England is concerned, and my lectures now will be directed to the history of civilization in England from the earliest times down to the Norman Conquest.

The authorities I shall have occasion to refer to are such as will, I think, throw most valuable light upon many obscure portions of early English history; and the researches which these authorities have made into the old

documents, historical and legal, have given an immense advantage to the student of the present day.

We can never be too grateful for the valuable results of the labour and study of the men I speak of—Kemble, Palgrave, Lappenberg, Guizot, Freeman, Green, Stubbs, Maine, and Pearson.

I divide the history of civilization and social life in England into four parts. The first embraces the period of time between the earliest immigrations of the Teutonic occupiers and the invasion of England by the Romans. The second occupies the period covered by the Roman Conquest; the third embraces the Anglo-Saxon period, and the fourth the Norman settlement consequent on the victory at Hastings, or, to use its other name, Senlac.

I am not proposing to narrate the general history of England. My theme, as I have stated above, is the rise and progress of its social life. Therefore I shall not go into the question of how this country was originally occupied, nor shall I describe at length its physical aspect in what may be called pre-historic times.<sup>1</sup> It will be sufficient if I state that, after the first settlement here of an old Mongolian set of colonists, roaming over the land with flocks and herds, and exhibiting but little advance in civilization—a race, as some think, of dwarfs, using bone implements at first, and later on stone-tipped and horn ones, and waging war with the wild beasts of the forest, or harpooning the whale—there came into the land a Keltic race. Then from time to time arrived adven-

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<sup>1</sup> As to this, the reader is referred to "The Making of England," by the late Mr. J. R. Green, Introduction, pp. 1-21.

turers from Gaul, whether Belgæ, Cenimagni, Icenî, or Simeni, leaving to this day some trace of their existence in this land in names familiar to us, as *e.g.*, Tamar, London, Arwystli, and settling down through the country in clans or tribes, with a chief and his kindred, druids or a priestly caste, bards half-priestly in character, fighting men, a labouring population, and a distinct body of slaves, formed partly out of the conquered inhabitants, the old occupants, and partly out of prisoners taken in war.<sup>1</sup>

These were our British ancestors, weak and impulsive, but not devoid of intelligence. Regarding their women with respect, and even with some degree of reverence, they allowed them to enjoy political influence and dignity. Their ideas of moral purity were not of the highest class.

A portion of them, according to Cæsar's account, were unacquainted with tillage at the time of his landing. The most civilized seem to have used coined money, and to have been able to work tin and lead mines. They made bronze, fashioned jet into shape, cemented stones by glazing, used wicker work, made coracles and war chariots, ornamented their arms, and dressed the clay soil with lime.

So they were above the condition of mere wild savages, were not averse from commerce with Gaul in glass vessels and trinkets; they burnt their dead, threw them into a circular pit, raising a large stone as a monument over the chief.

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<sup>1</sup> I have taken this description, and what follows, mainly from Mr. C. H. Pearson's "History of England," vol. i. ch. i.

Of their earliest homes, some were in islands formed of piles driven into the bottom of a bog or river, and connected by a causeway with the land. The stronger and more warlike tribes secured themselves from surprise in townships or camps, possessing the natural advantage of hill, forest, or marsh, and defended with felled timber and a ditch.

Their villages were circles of huts hollowed out of the hill or heath, the sides were wattled, and the roofs thatched. Here and there, in places where there was better culture, circular-shaped houses were constructed, with low stone walls, conical shingle roofs, and a single arched entrance, which served for window as well as door.

Their food was parched peas or grain, and the flesh of the animals they caught. They were huntsmen and fishermen of necessity, using trained dogs in the pursuit of their game, amusing themselves by way of play with something like ninepins.

To complete the details of this picture, we may imagine a British chief, says Pearson, with his "glib of matted chestnut hair and moustache, broad-chested, long-armed, high-cheekboned, with plaid thrown loosely about him, living among his clan in patriarchal fashion, with fighting men ready to do his will, and with none to share his power save the druid and the bard."

As to his religious faith, he believed in a human personality that would outlast the body, but also held the doctrine of the transmigration of souls. In his eyes many of our common animals were sacred. He revered the mistletoe, found omens in the voices of birds and horses, propitiated his gods with the blood of men, consult-

ing the quivering entrails to learn his destiny. Looking on the astral influences that presided at his birth as affecting his life, he was subject to sudden fits of despondency, succeeding bursts of courage; and in the belief that the stars of heaven were fighting against him, he submitted to defeat as coming from a higher power than man.<sup>1</sup>

Such were the men, and such their condition of life and civilization, at the time when Cæsar and his fleet in August (B.C. 55) appeared in the bay of Dover.

Of that expedition I say no more than that it was practically a failure. In the following year the invasion was repeated, with somewhat more success, but without the result of conquest, for no Roman soldiers set foot in Britain again for one hundred years. And so I pass over the defeat of Caractacus by Paulinus at the Island of Mona (Anglesea), A.D. 61, and the consequent disappearance of Druidism as a historical religion, as well as the defeat and death of Boadicea, a little later, by Suetonius. I do not dwell on the government of Britain by Caius Julius Agricola (A.D. 78-86), nor do I dwell on the final success of the Emperor Severus (about A.D. 190) at the Frith of Cromarty.)

It is sufficient to say that Britain now became a Roman province, at first for a century administered by a single prefect, afterwards by two prefects, and then by a vicarius (an officer of high rank, invested with legislative as well as administrative powers), under whom were five prefects, acting as heads of five provinces.

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<sup>1</sup> Pearson's "History of England," vol. i. ch. i. pp. 17-21.

The Roman rule lasted down to the end of the first quarter of the fifth century, when the native tribes, the foreign settlers, and the Roman colonists in the towns were left to their own fate, without an army, without imperial taxes, and without any central government.

Now what effect had this Roman rule upon the social life and the civilization of England?

Looking at the question with reference to national identity, to formation of national character, or to racial changes, the answer is—little or none; for the English nation, in its later and stronger development, is, as I shall presently show, “of distinctly Teutonic or German origin, owing its beginning of life to the Angles, Jutes, and Saxons, the immigrants into Britain of the fifth century, who formed portions of the tribes of Lower Germany, which had been the least affected in any way by Roman influences.”<sup>1</sup>

Whatever variations of physical and mental characteristics have been in progress in England, they are the work of a period of time dating, not from Roman days, but from the eleventh century, and are the consequences of the intermixture of English and German types, not of Roman and British blood. “From the Briton and the Roman of the fifth century we have received nothing. Our whole internal history testifies unmistakably to our inheritance of Teutonic institutions from the first immigrants after the cessation of Roman administration.”<sup>1</sup>

But if we discuss the question from the side of other

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<sup>1</sup> “Documents Illustrative of English History,” by W. Stubbs, M.A.; edition 1880, part i. p. 1.

influences than those above mentioned, the answer is a different one; for the Roman occupation has left distinct marks, and has worked influences that can hardly be over-rated. To these I will briefly advert.

According to a writer, whose early death is as much to be deplored as his reputation for sound learning, ample research, acute discrimination, and admirable style stands deservedly high (I mean Mr. Green), the only influence of Roman Britain on New England was exhibited in three lines: (1) that of giving limits to the country; (2) that of determining the bounds of kingdoms and tribes; and (3) that of acting upon the social settlement.<sup>1</sup> In every other way, says Mr. Green, Roman life disappeared.

So it did certainly; but these three lines upon which Roman life ran, in its alteration and amelioration of British social life, are important ones. In themselves they would be strong marks of the genius of a colonizing people. But there are other influences for good which the Roman conquerors left behind them, and which to this day are visible.

The first of these is in a direction that is especially Roman, and that was road-making. In the making of these roads, the materials that came first to hand were used—gravel and stone, if they could be procured, if not, any other stuff that would serve the purpose of the makers. Although not resting on stone or concrete (as was the custom near Rome), nor framed with the same massive solidity as the roads in the neighbourhood of that city, yet so sound was the work and so skilful was

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<sup>1</sup> "Making of England," ch. iv. p. 147.

the design, that even to this day the traces of the old Roman roads in Britain can be distinctly seen.

Two great roads connected London with the lines of Hadrian, one going westward to Chester, turning east to York, and then going west to Bowness. This is the famous Watling Street. In Anglo-Saxon times it was one of the king's roads, and is familiar by name at least to the readers of "*Ivanhoe*." A second road went north from London, through Bedfordshire to York, afterwards called Ermine Street, and still visible near Hitchin in Hertfordshire, and on the Gogmagog Hills in Cambridge-shire. A third passed through Colchester, Cambridge, and Lincoln, turned off to York, and then ran eastward to the Wall. Akeman Street connected Bath, through Speen and Wallingford, with London. The Fosse Way and the Ryknild Way connected Lincoln and York with Bath and with the Severn. Roads radiated in different directions to Southampton, Salisbury, and Exeter; and from Canterbury to Richborough, Dover, and Lymne.<sup>1</sup>

From a military point of view, a complete intersection of a country by the formation of roads, it need hardly be said, is of the first importance in the settlement of such a tract of land as Britain presented to her Roman invaders. But from the side of social progress and civilizing influences, road-making is a factor of no slight weight.

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<sup>1</sup> Pearson's "*History of England*," vol. i. pp. 40-42. For the number and the lines of route of the Roman roads, as well as for the names of the stations on them, see Pearson's *Historical Maps*, "*Britannia Romana*."

In the first place, the country along the line of route becomes settled, then villages and towns appear, and within their boundaries trade and commerce grow into life, followed by law and order, by civil administration and wealth. In the next place, the inhabitants are brought together, natives and settlers see and learn to understand one another; and thus is produced a harmony which, as the progress of settlement expands, tends to develop good-will, intelligence, and the more humane instincts consequent on moral improvements.

Now this is very much what took place in Britain during the fourth century.

The first half of the fourth century is chiefly remarkable in Britain on account of the harmony with which the natives and the Romans, as well as other settlers, united in the arts of peace.

The cultivation of grain had been carried to such a height that Britain became the granary of the northern provinces of the Empire, and by yearly exports supplied other countries with food, to its own material benefit.

Civic establishments were so flourishing, that builders and other artificers were sent for from Britain, in order to give the aid of their skill to the restoration of the desolated provinces.

Imperial Rome in the period of full vigour, however greedy of conquest she was, knew well how to confirm her victories and to settle her conquests. Among other factors in the production of firm and orderly government, with its civilizing influences, none was looked on with more favour or carried out with more determination and care than road-making.

But besides road-making, there was another very important factor in the work of social progress in Britain: that was the establishment of a complete system of organization in all the towns throughout the five provinces into which Britain was divided.

Modelled exactly upon the lines prescribed in the civil jurisprudence of Rome, the Roman-British towns, although not in any sense of the term centres of corporate life, self-governing communities of citizens, yet were, as the representatives of law and systematic government, elements in the spread of civilization.

Annexed to them, and presided over by special magistrates and district prefects, the country districts (*pagi*) in their turn received the ameliorating touch of order and local government. The cultivation of the land was regulated by law; markets and fairs were instituted (held commonly on Sundays), trade expanded, and even some notion of a national life was started.

By means of the roads (constructed originally for the passage of troops) highways of trade were opened up. By means of military colonies, schools of municipal organization and law appeared, and out of the decurional system of town and village government grew the Saxon gemots and the idea of parliamentary life.

I do not know that you will find a better summary of the effect of the Roman occupation upon the economical and moral conditions of life in Britain than that given by Mr. Pearson. Therefore I end this part of my survey with the following extract: <sup>1</sup>

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<sup>1</sup> Pearson's "History of England," vol. i. ch. iv. p. 55.

“To sum up all these, the occupation of Britain by the Romans was like the French colonization of Algeria, with the differences of a long and short tenure. The government was military and municipal, the conquerors unsympathetic and hard. But the peace which they enforced favoured commerce, and the mines which they developed were prolific in salt, iron, tin, and lead.

“They burned coal where wood was scanty in the north, and in one instance carried a mine under water.

“Under Julian (A.D. 358) 800 vessels were employed in the corn trade between the English coasts and the Roman colonies on the Rhine.

“Before Cæsar’s time even the beech and the fir had been unknown in our forests, and the apple, the nut, and the raspberry were probably the chief of our native fruits. The better half of our common trees—from the cherry to the chestnut—are of Roman origin; the vine and the fig tree were introduced and maintained themselves; the pea, the radish, and other common vegetables were then added to the garden, and it is even possible that it is to Rome we owe the rose, the lily, and the pæony.

“The mule and pigeon followed the track of the Roman legions. Yet a country life was not that to which the Roman colonist generally inclined. He was rather a dweller in towns, a trader, and a builder, and he scattered cities broadcast over the island.

“The splendour of Roman remains attracted attention in the twelfth century, when the grass was growing over them, and generations had already quartered in them for homes. Above all, those numerous cities had been centres of Roman polity and law. These influences can

hardly be over-rated, nor can it be doubted that many of them remained and even gathered strength where all seemed to be swept away. For good or for evil, England was henceforth a part of the European commonwealth of nations; sharing that commerce, for want of which Ireland remained barbarous; sharing the alliances, for disregarding which the Saxon dynasty perished; penetrated by ideas which have connected the people in every historical struggle in the Crusades and French wars with the sympathies and hopes of other men."

In the year 406 A.D. the Roman legions were for a second time since the conquest withdrawn by the Emperor Honorius. They returned for a short stay, in the hope of making head against the inroads of the Picts and Scots; but in spite of a transient success, they were recalled to Gaul and Italy in order to repel invaders and insurgents in those regions.

In A.D. 446, in reply to the supplicating embassy of the Britons, Ætius was unable to give help, and thus before the fifth century was closed Britain no longer formed a part of Roman dominion, and was left to its fate.

Henceforth a new era begins, and British life ceasing to exist under the constant immigrations of Angles, Jutes, Saxons, and other Germanic and northern incomers, changed from Keltic, British, or Roman forms to Teutonic.

The Briton disappears, the Anglo-Saxon takes his place, and the language, the form of life, the habits and the customs of the country, begin to assume a shape that lasted from the seventh to the eleventh century.

Early in the seventh century the subjugation of the Britons by the Angles and Saxons was complete, and

British nationality gave way to the Teutonic element that had thus been introduced.

England was then broken up into little kingdoms, each having a chief potentate as lord paramount; for gradually the counties became absorbed into provinces, and the provinces into kingdoms.

Inasmuch, then, as the conquest of the island was achieved by two great races of Teutonic origin, these two races divided it. In the north and east the Angles settled and ruled; in the south the Saxons.

Still the influence of Rome remained in one of the lines in which, as Mr. Green has pointed out, its influence was permanent, for the old Roman limits were preserved in those of the three great sovereignties which successively rose and fell in England. The Anglian province of Deira corresponded to the Roman *Maxima Cæsariensis*. The Saxon province of Wessex, including Kent, corresponded to the Roman *Britannia Prima*, and the Mercian kingdom under Offa in the Midlands and Easterns corresponded to the Roman *Flavia Cæsariensis*.

Between the Angles and the Saxons a war for sovereignty was waged, as clearly marked as it was important in its results. Not a bloody and bitter one (as Mr. Pearson notes),<sup>1</sup> nor envenomed by the contempt of the strong for the weak, but one that lasted till the coming of the Danes, explaining why the Danes were able to plant themselves, with a hearty acceptance from the people, in the Anglian districts, explaining also the weakness of England under every sovereign until the

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<sup>1</sup> Pearson's "History of England," vol. i. ch. ix. p. 136.

Norman yoke and the Norman nobility welded Angle and Dane and Saxon into Englishmen.

Now, because (as I have before said) I am not narrating the general history of England, but am only engaged upon an inquiry into the fate and fortune of its social life, I shall not attempt to describe the events that led to the establishment of an Anglo-Saxon kingdom and to its displacement by a Norman power. I will only advert, with all brevity, to a few leading facts.

The first king of any note in England was a king of Kent, succeeded by kings of Northumbria. Under the Northumbrian Edwin (A.D. 626) the forces of Wessex were crushed and five of their princes slain.

This victory, acting upon the remembrance of a vision in which Edwin, at a time of extreme danger and despondency, had been assured of help by a strange and mysterious visitant if he would hear and obey the doctrines of life and salvation better and more efficacious than any his relatives had ever heard, coupled with the exhortations of the Christian missionary Paulinus, stirred in Edwin's mind a desire for the new faith, and on an appeal to his friends and the witan, the scene took place which I have elsewhere narrated.<sup>1</sup> The result was the renunciation of idolatry by the king and the people, and the establishment of the Christian worship, followed by the erection of York into an archiepiscopal see.

But the comforting assurances of the mysterious visitant and the prayers of Paulinus were unfortunately not attended with continued prosperity. Seven years later

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<sup>1</sup> See as to this, Appendix, Note G.

Edwin was defeated and slain at the great battle of Hatfield, in Yorkshire, by the Saxons of Mercia and Wessex under Penda.

Penda, pagan as he was, was not intolerant. He allowed the Christian converts to remain in their new faith, but compelled them to live up to the standard they professed.<sup>1</sup>

(For more than twenty years Penda waged a successful war, but at last lost life and fortune in the battle near Winwood (A.D. 655).)

Edwin's reign ought not to be passed by without a few words of notice, as bearing upon that subject with which I am principally concerned, viz., the development of social life in England.

The close of his reign is noteworthy on account of the unification of the community, of their gathering into a single people. For in the place of the three great groups — southern, midland, and northern — there was formed, under Edwin as king, a single English people.<sup>2</sup>

But then, as Mr. Green points out, he was a king superior to all who had preceded him in his aptitude and genius for civil government.<sup>3</sup> "A woman," said the old proverb, "with her babe might walk scatheless from sea to sea in Edwin's days." In his choice of York as the capital of his kingdom and seat of his council, he displayed his sound sense as well as his thorough appreciation of local advantages.

<sup>1</sup> See Bede's "Ecclesiastical History," ch. xxi. p. 144 (Bohn's Antiq. Library).

<sup>2</sup> Bede, book ii. ch. ix. p. 83 (Bohn's Antiq. Library).

<sup>3</sup> "Making of England," ch. vi. p. 259.

Last of all, by his conversion to Christianity, and the efforts he made to extend the moral gains to be obtained from its tenets, he helped on a work which, some ten years later, was taken in hand by Theodore of Tarsus, and which, though devised principally for the immediate advantage of the ecclesiastical body, was indirectly advantageous to the national council, the Witenagemot, owing to the introduction of the forms and decencies of the ecclesiastical councils into the meetings of the nation.

As a ruler, as an administrator, and as an enlightened Englishman, Edwin played his part well in the development of civilization and social life in England.

From the death of Penda a long war, or rather series of wars, followed until (in A.D. 686-697) the royal line of Wessex succeeded in obtaining the supremacy, and, in its King Ine, a legislator as well as a general came to the front, whose laws survive to this day, exhibiting his wisdom as a maker of law and his desire to do even-handed justice to all, British as well as Saxon.

(From the reign of Ine, when Anglo-Saxon royalty had its actual beginning, down to that of Offa (A.D. 757), the process of settlement went on, though not without revolt and bloodshed.)

Offa ruled for forty years, and his reign is the first real orderly epoch in Anglo-Saxon history.

Under his sway the country may be said to have taken rank as a single power with the states of the Continent.

The reign of Offa is remarkable for more incidents than one, and certainly may be regarded as an eventful period in the advance of English civilization and social life. By

him the Church order was remodelled, Church discipline was reformed, and the Church lands were distributed. A contemporary of the great Charlemagne, he carried on diplomatic intercourse with that renowned monarch. He was a patron of men of letters,<sup>1</sup> as well as a friend and supporter of learning. By his intercourse with the papal power in Italy, and with the Frankish court under Charlemagne, Offa brought his countrymen into connection with lands more advanced in civilization than their own, thus lifting them out of their former obscurity, and giving them an insight into the life, manners, and range of thought of a broader type and more cultivated character.<sup>2</sup>

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<sup>1</sup> Two of these, the friends of Charlemagne, are specially deserving of notice—Alcuin and John Scotus (Scotus Erigena).

<sup>2</sup> See Green's "Making of England," ch. viii. pp. 418-425, and Pearson's "History of England," vol. i. ch. ix. pp. 142-146. See also "The Anglo-Saxon Chronicle," from A.D. 755 to A.D. 794 (at pp. 338-342 in Bohn's Antiq. Library).

## LECTURE IX.

### *KING ALFRED.*

Alfred and the Special Benefits conferred by him upon the Political and Social Life of England—Anglo-Saxon Nationality: its Characteristic Features—The King, the Witenagemot, the Shire-Moot, the Hundred-Moot—Mode of Life among the Anglo-Saxons—The Eorl, the Ceorl, the Læt, the Theowna—The Rights and Privileges of Royalty.

IN my last lecture I was speaking about the events of the reigns of Edwin and Offa. I shall commence this one with some further remarks of one to whom learning, social advancement, law, and political energy in Saxon England owe as much as to any ruler—one whom no Englishman deserving of the name ought to forget, or to speak of without the admiration that his many virtues and excellences have deserved. I mean Alfred.

As a patron of learning he stands high in the roll of fame. Though apparently uneducated in his youth,<sup>1</sup> he strove with all his power to elevate and enlarge the intellectual and mental qualities of his subjects. He attracted to his court scholars from Old Saxony, from

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<sup>1</sup> See as to this, Asser (ed. Wise), cited by Mr. Pearson, "History of England," vol. i. p. 176, note 2. In later years "he taught himself Latin, and was able to render Latin books into the English tongue." See Green's "Conquest of England," ch. iv. p. 158, citing in note 1 Pauli, "Life of Ælfred," p. 168.

Gaul, and from Ireland. He founded schools at Shaftesbury and Athelney, and at Oxford also. If we are to believe tradition, he busied himself in the furtherance of translations of the literary works of other lands. To him the Saxon of his day owed an acquaintance with Orosius's "History of the World," Bede's "History of the Anglo-Saxon Church," Boethius's "Consolation of Philosophy," Gregory's "Pastoral Book." To him also later generations are indebted for the Chronicles of the contemporary events of his reign in the Saxon tongue.

As a lawgiver, he distinguished the great principles of law from the local customs that modified the application of those principles, in the code wherein is developed the conception of a State as an ideal commonwealth; wherein the right living of man is upheld as the primary object of good government; wherein also are set down the general principles of the English law; wherein the right of feud is confined within just limits; and wherein the powers of the courts of justice are extended.

As a political administrator, he so used the poor resources of his country as to enlarge his dominion, to exact an honourable peace for his countrymen, to extend the maritime defences of the island, and to bring out the fact that Britain can and ought to rely upon and maintain its firm hold of the seas surrounding its shores.

Clear-headed and economical in the distribution of the country's resources, he raised revenue, and used it for the benefit of his countrymen.

Just in all his dealings, and thoroughly acquainted with every portion of his kingdom, he impressed on his subjects the lesson that a king, even in those times of

warfare and exaction, may be something more than the wearer of a crown, that he may aspire to be regarded with veneration as the father of his country.

There is a fine passage in Mr. Pearson's "History of England," wherein the merits of Alfred are well and tersely stated.<sup>1</sup> I refer my readers to it, contenting myself with this short extract: "His character was of that sterling conservative type which bases itself upon old facts, but accepts new facts as a reason for change. . . . The watchwords of modern democracy would have sounded strangely in his ears."

Looking at him from all sides of his character, it must be acknowledged that his tact, his statesmanship, the energy of his mind and the goodness of his heart, won for him a success, and have given him a fame, far beyond those of any other ruler than the great Charlemagne.

We have now come to the period of time in our history when the Anglo-Saxon nationality makes its appearance. Of it, its characteristic features, and its effect upon the social life of England, I shall speak.

In every respect it was different from aught that England had hitherto seen. The Briton had long vanished, and with him had departed the tribe or clan life which had marked his presence. The Roman, with his unyielding claim of power and stern discipline, his careful administration, his aptitude for and belief in law, his military

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<sup>1</sup> "History of England," vol. i. ch. xi. pp. 179-181. See also Green's "The Conquest of England," ch. iv. pp. 187, 188. Hallam's "Middle Ages," vol. ii. ch. viii. p. 285, edition 1853, and Lappenberg's "Anglo-Saxon Kings," vol. ii. ch. v., edition 1884 (Bell & Sons).

skill and knowledge, and his intensely centralizing inclination, had disappeared; and now, after years of predatory incursions and devastating warfare, a nationality totally different, as I have said, from anything preceding it, and distinctly Teutonic, made what once was British or Roman-British English.

Its differentiating marks are not hard to seize. They stand out clearly in the history of the people.<sup>1</sup> In the first place we have a nation with a king at its head, not a supreme lawgiver, nor the fountain of justice, nor the irresponsible leader, nor the sole and supreme politician, nor the primary landowner,—but the head of the race, the chosen representative of its identity, the successful leader of its enterprises, the president of its assemblies, created by it, and answerable to his people.

He is the national representative; the national officers are his officers; he leads the army of the nation; he is supreme judge. In each capacity his power is limited by a council of free advisers, and he is bound by his oath to his people to *govern well, to maintain religion, peace, and justice*, they being bound to him by a general oath of fidelity.<sup>2</sup>

To assist the king in the work of administration, a council meets called the Witenagemot, or Witan, whose members are the princes, the wise men, the counts and the councillors of royalty, the bishops, the ealdormen, and the king's thegns.

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<sup>1</sup> See "English Constitutional History," by W. Stubbs, M.A.; edition 1870; part i. pp. 8-12.

<sup>2</sup> For an exemplification of this, see the preamble to the laws of Ine (A.D. circa 690), Wessex, at p. 208 *inf.*

On greater matters the princes consult, on smaller ones all. The plebs or "folk" have no admission to or voice in this council, for their court is a different one, as I shall presently show.

The Witan have the right, where they are able, of electing and deposing kings. Together with the king, they nominate ealdormen and bishops; they regulate the transfer of public lands, impose taxes, vote supplies, and so decide peace and war; they authorise the enforcement of ecclesiastical decrees, join in making laws, and sit as a high court of justice over all persons and causes.<sup>1</sup>

As to the taxation, this is not very troublesome work, for the "*trinoda necessitas*"<sup>2</sup> and the rents of public lands for a long time provide all the necessary expenses of government. Beyond this, no taxation is imposed save on extraordinary occasions, *e.g.*, the Danegeld<sup>3</sup> and the Shipgeld.<sup>4</sup> As to legislation, this is concerned principally in minute adjustments and modifications of customs.

Besides the Witenagemot, there are other councils, of minor standing, but of considerable importance and value for the special work assigned to them.

These councils depend on the territorial divisions of

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<sup>1</sup> For a valuable dissertation on "The Origin and Powers of the Witenagemot," I refer my readers to Professor Freeman's "History of the Norman Conquest" (third edition, revised 1877), vol. i. ch. iii. § 3, pp. 100-117.

<sup>2</sup> That was moneys levied by way of contribution to the military expeditions, to the repair of fortresses and of bridges.

<sup>3</sup> A tax of two shillings on every hide of land as a bribe to the Danes.

<sup>4</sup> A contribution of a ship and its equipments levied on the shires, in order to resist the Danes.

the whole country. The lowest of all, where the unit is the township, is the hundred-moot, assigned for the hundred or wapentake,<sup>1</sup> composed of a cluster of towns presided over by a hundred-man, who is generally elected, but sometimes nominated by the noble or prelate to whom the hundred belongs.

His duty is to call the hundred together, to lead them to the host, or to the hue and cry, or to the shire-moot. He is helped by a body of freemen—twelve, or a multiple of twelve,—who declare the report of the hundred, and are capable also of declaring the law; for questions of fact are determined by compurgation and ordeal.

From the hundred-moot the appeal is to the shire-moot<sup>2</sup> or folk-moot, and, when both fail to do justice, to the Witan.

In the shire-moot the unit is the hundred, a cluster of hundreds making up the shire. Its magistrates are the ealdormen, the sheriff, and the bishop; its councillors the thegns, who declare the report of the shire; its judges are the folk assembled in the shire-moot: the people, the lords of land with their stewards; and from the townships come the reeve and four men, and the parish priest.

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<sup>1</sup> The wapentake (from *wapen-tac*, the taking or touching the arms or weapons), corresponding to the hundred, was a division peculiar to the north of England (Yorkshire). It took its name from the ceremony which accompanied the chief magistrate, who, dismounting from his horse, fixed his spear in the ground. This was touched by the spears of all who were present.

<sup>2</sup> Shire (*scire*, *scir*), a division, province, county, derived from *sciran*, *sceran*, to clear, cut off, divide.

So, then, you see how the progress of order has advanced in the country. A settled form of government, in which the national and popular spirit is each of them apparent, and where royalty (although at times some more powerful monarch than usual may have the disposal of offices and even of public land at his own will) is dependent in the matter of legislation and taxation, and in the execution of judgments, upon the advice and voices of others.

The principle of popular representation is recognised in the folk-moot, wherein all the freemen in person or by representation appear.

The idea of a common national union is developed in the Witan, where the ealdorman is appointed to represent the freemen, and where all ranks are combined for the purpose of maintaining the defence of the country. The shire, led by the ealdormen; the freemen by the sheriff; the vassals by their lords; the tenants of the Church by the bishop's reeve or the abbot's reeve—all acting under the ealdorman as the national leader.

Moreover, the national as well as popular feeling is maintained in the execution of justice, and the securing of the rights of the king or nation in the shire by the sheriff.

Again, the principle of unity is further guarded by the union of the shires in the kingdom, whose head is the king, and whose national council is the Witenagemot.

The national organism, then, between the seventh and the eleventh centuries may be thus generally described:<sup>1</sup>

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<sup>1</sup> "English Constitutional History," by W. Stubbs, M.A. (Intro-

"The people occupy settled seats; the land is appropriated to separate townships, and in these certain portions belong in entire possession to allodial owners; others are the common property of the community, and there are large unappropriated estates at the disposal of the nation.

"Each of these townships has an organization of its own for certain purposes; the inhabitants are united by the mutual responsibility of the kindred, or of the guild, or of the frithborh; for others they are under the authority of their reeve, who settles their petty disputes, collects their contributions to the national revenue, leads the effective men to the 'fyrd,'<sup>1</sup> and with his four companions represents the township in the court of the hundred or of the moot.

"The townships are not always independent. Sometimes they are the demesne of the lord, who is a noble follower—'comes,' 'gesith,' 'thegn of the king'—with jurisdiction over the men of the township, and many of the rights which we associate with feudalism. Where, however, they are independent, the organization is of the same sort, the 'reeve' is the lord's nominee, the 'moot'

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ductory Sketch, p. 8). See also for full information as to origin, development, and early history of the "Gá" or "Scir," Kemble's "Anglo-Saxons," vol. i. ch. iii.; and for the Saxon Hundred and the Saxon Shire, see Sir F. Palgrave's "Rise and Progress of the English Commonwealth," vol. i. ch. iii. at pp. 96-104 and pp. 116-119.

<sup>1</sup> "Fyrd," the duty of military service for the defence of the country. Refusal to attend or neglect to attend this gathering rendered the defaulter liable to fine and forfeiture of land. See the laws of Ine in Thorpe's "Collection of Ancient Laws."

is the lord's court, the status of the inhabitants is scarcely less than free, and their duties to the State are as imperative as if they were free."<sup>1</sup>

Such was the national organization of the Saxon people at the time of its complete development. Let us now take a look at their mode of life and their dwellings. Perhaps as good a description of the dwelling of a Saxon "thegn"—that is, of an "eorl" of the highest and noblest class—is the one that Sir Walter Scott has given us in his novel "Ivanhoe."

And let me just say who and what was such an one as Sir Walter has described in the person of Cedric.

He was the freeman, the ætheling, whose homestead rose high above the lowly dwelling of the "ceorl," himself free and free-necked; himself also a weaponed man, bearing spear and sword, and entitled to the right of self-redress or private war. As "eorl," he was distinguished by his wealth and noble blood; held by his fellow-villagers in hereditary reverence; one of the chosen host-leaders in time of war, whether of the hundred or of the tribe.

As "thegn" (a title which was recognised in the laws of William the Conqueror, as we shall see when I come to read those and other laws), he ranked among the greatest and the noblest; was rewarded by exemption from the general jurisdiction of hundred-moot or folk-moot; and though exempt also from actual service in the king's household, or in the king's war-band, was bound

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<sup>1</sup> Upon this passage from Bishop Stubbs' work, some explanatory comments will be found in the Appendix, see Note L.

to him by personal ties of allegiance far closer than those which anciently bound an "eorl" to the chosen war-leader of the tribe.

Supreme in his own household, and in the locality in which he was placed, he was not far removed from the position of a feudal lord.

Indeed, as Mr. Green has pointed out, thegnhood contained in itself the germ of the later feudalism which was to battle so fiercely with the Teutonic freedom out of which it grew.<sup>1</sup>

No wonder, then, that a man, such as Sir Walter Scott has portrayed in Cedric, proud of the old glories of his Saxon forefathers, should chafe with bitter indignation under the yoke of a race whom he looked upon as men of an inferior strain to himself.

His dwelling and his style of life are well painted in "Ivanhoe." "Rotherwood presented the appearance of a low, irregular building, containing several courtyards or enclosures, extending over a considerable space of ground, and which, though its size argued the inhabitant to be a person of wealth, differed entirely from the tall, turreted, and castellated buildings of the Norman nobility. Defended by a deep fosse, which was drawn round the whole building, and filled with water from a neighbouring stream, it was strengthened by a double stockade or palisade, composed of pointed beams supplied from the adjacent forest. From the west there was an entrance through the outer stockade, which communicated by a drawbridge with a similar opening in the

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<sup>1</sup> "The Making of England," ch. iv. p. 180.

interior defences. These entrances were protected by projecting angles, where, in case of need, archers or slingers might be posted."

Of the inner arrangements of the house, and of the dress and food of the inhabitants, I will not speak. They are so well described in the work from which I am quoting, that I need only refer you to its pages.

The home of the "ceorl" or freeman differed only in degree from that of the "thegn." It was built of wood, and contained the large common living-place for all the dwellers, known as the hall. A board set up on trestles, when needed, formed the rough table for the family meal, and when this was cleared away, and the wooden beer-cups or drinking-horns were passed round by the women to the house-master and his friends, the gleeman (some Allen-a-Dale) sang his song or played his harp, or a jester (some Wamba), if they could get him from the big hall, played his pranks and cut his jokes. By the side of the hall stood the chambers for the women and the household, and round the farmyard were stable, threshing-floor, and barn.

The homestead supplied the provender, grain, milk and cheese, honey and wax, ale and beer and mead.

The work of the farm was done by the freeman and his serfs,—for oxherd, cowherd, shepherd, goatherd, swineherd (like Gurth), to drive the hogs into the forest and woodland, barn-man and sower, were in the wealthier household the serfs; the poorer freeman had to content himself with his own labour.

Now all these freemen were not casual comers. They had been brought together from many a day long past.

They were welded into a common body by a close connection, founded on the ancient blood-tie, and eventually resulting in a form of kinsmanship, out of which grew that mutual responsibility of which I have not long ago spoken, carrying with it the claim to *lād* and *wer*.<sup>1</sup>

I have just said that the farm work of the wealthier freeman was carried on by himself and his serfs; therefore I purpose to add something about the condition of life of those who were in the position of unfree and of serf.<sup>2</sup>

The freeman, or "ceorl," was, as I have intimated, the only person who was allowed to share in the common land, a privilege which marked him off from the unfree man, or "læt," the tiller of the land.

The one was the descendant of settlers who, either from their earlier arrival, or, later, by kinship with the first settlers, had been admitted to a share in the land and its corporate life.

The other was the descendant of later comers, to whom such share was denied. Inferior in this respect to the freeman, still the "læt" was not of absolutely serflike condition. His house and home were his own. His life and limb were secure, save as against his lord. So far as more recent laws affected him, he was capable of being summoned to the folk-moot, had equal right at law with the freeman, and was called like him to the hosting.

But in addition to his inability to share in the common

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<sup>1</sup> See on all this Green's "Making of England," ch. iv. pp. 178-187; and Lappenberg's "Anglo-Saxon Kings," ed. 1874 (Bell & Sons), chs. xx. and xxii.

<sup>2</sup> See, for larger information on this subject, Kemble's "Anglo-Saxons," vol. i. ch. viii.

land, he had to pay rent, in labour or in kind, for the land which he tilled, holding it as tenant under some freeman who was his lord. Against him he had no rights, nor could he leave him or the land at his will; for in tillage as in fight he was bound to render due service to his lord. Still, so long as these services were done, the land was his own. His lord could not take it from him, and was bound to give him aid and protection in exchange for his services. Such was the condition of the "læt."

Far different was that of the slave or serf, the "theowna," the "esna." Of these some were slaves by birth, whose forefathers had been either Roman slaves, British prisoners of war, or captured from other enemies. Some again were "wite theownas," feudal slaves, who once had been freemen, but were reduced by sentence of law to the servile condition on account of debt or delinquency. Sometimes, too, the poverty of a father compelled him to sell his children and wife into bondage.<sup>1</sup>

In any case the slave became part of the live stock of his master's estate, to be willed away at death with horse or ox. His children were bondsmen, and even in the case of children born of a slave mother to a freeman, the taint of bondage attached to the offspring. His master could slay him if he pleased. He had no place in the justice court, no kinsmen to claim vengeance or guilt-fine for the wrong.

If a stranger slew him, his master could claim damages, for a special "weregild" was attached to the person of the

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<sup>1</sup> Of these serfs or "theowns," at the time of the Conquest the number, as registered in the Domesday Book, was a little over 25,000.

"theow." One-half of this fell to the master, and one-half to the kin (*i.e.*, the kin of the village).

If he did wrong he was liable to the lash; if he fled he might be chased like a stray beast, and when caught might be flogged to death. If the wrong-doer was a woman, she might be burned.

Under a merciful or indulgent master his condition would not be intolerable, and, as in the case of Gurth, he might, by his superior qualities, creep into his master's favour, or succeed in working out or even purchasing his enfranchisement, for manumissions were of frequent occurrence, obtained sometimes in the life of his master, sometimes by will after his death.<sup>1</sup>

These manumissions were greatly favoured by the clergy, who certainly strove to improve the condition of this unfortunate class of human beings.

A class of half freemen, whose name betrays their Danish origin, occurs in the north of England, called "Drenghs," a word which, like the German *knappen* (knaves), and similar designations, signified first the son, and then the servant. They were, it appears, bound to render military service to the chief manor.

They are noticeable on the land between the Ribble and the Mersey, and in the Vale of the Tyne, and correspond on the Scottish frontier to the Radchenistre on the Welsh border, and to the Radman of West Wales.

I have thus given an account of the social grouping, the national life, and the mode of living, by which the

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<sup>1</sup> As may be seen in the laws of King Wihtred, about A.D. 696. On this subject, see Kemble's "Anglo-Saxons," vol. i. ch. viii. pp. 211-216.

Anglo-Saxon period of English history was distinguished. Let me finish it with a short, compendious detail of the different ranks of society, premising it with saying that the possession of freedom was the special mark of the Anglo-Saxon occupier, and that the right to share in the common land was the accompaniment of the free state and the privilege of the free man.

At the top of all stood the king, not a Bretwalda or ruler of the Britons, not possessed of imperial power, but a dominant leader, exercising, before the close of the sixth century, a greatly consolidated authority, and standing much above the mere chiefs or kinglings who appeared at the head of the tribe in the early British times, "the son of the nation, the ruler of the people, claiming and receiving indisputable predominance over the numerous dynastic families which still remained scattered over the face of the country, as well as over the freeholders in the *gá* or *scyr*" (Kemble, vol. ii. p. 24).

To his person a distinct "weregild" was affixed, and later on, against his life conspiracy, even indirect, was punishable with death and loss of property. He was invested with dignities and privileges through which he could discharge public functions for the benefit of the common weal.

The rights of royalty were numerous and valuable. They are set out at full length by Mr. Kemble (see vol. ii. ch. ii.). Among them the following deserve notice:—

The king possessed the power in certain cases of staying execution and granting pardon. In process of time he obtained the privilege of escheat and forfeiture for certain offences. He could impose fines, which were levied by

the public officers to his use. He was entitled to "treasure trove." He could insist on the payment of royal dues during his progress through the country (called "cyninges feorm"), could claim the service of horses or palfreys for the carriage of his effects; was privileged with the right of proper watch over him when he came into a district (called in Saxon, "heáfodweard," or headward).

But above all, and most important as well as valuable, were his rights to "wreck," to "coinage, and the nomination of moneyers," and to mines and minerals. Grants of market, with power to levy tolls and provide for the maintenance of order therein were royalties. So were wardship and marriage (but confined, in all probability, says Mr. Kemble, to the children and widows of the thanes or comites); and so were "heriots."<sup>1</sup>

Almost on a level with the king (the cyning) was his wife (cwen), the "hlæfdige," ladyship, as she was termed *par excellence*. If married to him before his accession to the throne, her consecration and crowning took place at the same time with his. If she had been married to him after his consecration, then she was consecrated separately. The object of as much respect as the "cyning" himself, she was entitled to a throne by his side. If need required it, she might be called on to play a leading part in the affairs of the country.

Surrounding the royal personages were the attendants

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<sup>1</sup> The above enumeration of royal rights is abridged from Kemble's "Anglo-Saxons," vol. ii. ch. ii. The reader is also referred for an admirable account of "the old English Kingship" to Professor Freeman's "History of the Norman Conquest," vol. i. ch. iii. § 1, pp. 72-80 (third edition, revised, 1877).

of the Court, the followers of the household. The most important of these were the chamberlain, whose designations are various; viz., "hrægelthegn," *i.e.*, thane or servant of the wardrobe, "cubicularius," "camerarius," "búr-thegn," or bower thane, "dispensator regis," "steward," and "thesaurarius." What his precise duties were it is difficult now to say, but probably the general management of the royal property and the regulation of the household were entrusted to him. "In this capacity" (says Mr. Kemble, vol. ii. ch. iii.) "he may have been the recognised chief of the 'cyninges túngeréfan,' or king's bailiffs on the several estates." He was the Lord Chamberlain of the Household, rather than the Lord Great Chamberlain of more modern times.

The marshal (*marescallus* among the Franks), comes stabuli, or master of the horse. According to Mr. Kemble, he must be looked upon as the general of the household troops, inasmuch as he gradually became head of the active and disposable military force of the palace.<sup>1</sup> His Anglo-Saxon denomination of "steallere" (*comes stabuli*) rather indicates the Roman origin of the office, but the terms, "cyninges horsthegn," "stabulator," and "strator regis" are also applied to this officer.

The steward ("dapifer," "discifer regis"). To this officer, whose Anglo-Saxon name was "disc-thegn" (thane of the table), was committed the duty of looking after the service of the royal table, in which probably was included

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<sup>1</sup> "It was thus that the high military dignity of Constable or Grand Marshal by degrees was developed (Kemble, vol. ii. ch. iii. p. 107). "We have no evidence," says the same writer, "of the existence of the office before the end of the ninth century."

the arrangement for the household generally, wherever the king's residence might be. The office was one of high position even in old times, but it did not attain to the importance and power that distinguished the seneschal or "*dapifer angliae*" in later days.

Last of all, the butler ("*pincerna*"). Whether this official discharged duties other than those which the name imports is not to be found now, but the post was one of the highest position, and held by men of noble birth and great eminence.

These offices, as Mr. Kemble points out, were household dignities, and had nothing to do with the general administration of business in the country. They grew into importance as the old and comparatively less aristocratic spirit of free organization became altered and weakened. As the kingly power rose in influence and strength, so these offices attained to distinction, and became dependent on the royal favour. When the freemen perished, and the notion of thaneship took the place of freemanship, these officials, as the trusted friends of the king, became his agents in the administration of the country. After the introduction of the feudal system, the holders of these court functions became holders of hereditary fiefs, and then in time, from being the trusted friends and supporters of the Crown, they were strong enough and of influence enough to oppose its authority. "As long as a vestige of the free constitution remained, we hear but little of court offices; what they became upon its downfall is known to every reader of history." <sup>1</sup>

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<sup>1</sup> Kemble, vol. ii. ch. iii. p. 112.

Of the other officials working with those above mentioned, or acting under them, I do not propose to speak. Those who desire information as to them and their duties will find it in the chapter of Kemble's "*Anglo-Saxons*" from which has been drawn what I have given above.

To one only will I make reference, because of the opposite views of Kemble and Lappenberg as regards the antiquity of the office.

Lappenberg, relying on a charter of Æthelbert (A.D. 600), is of opinion that in the time of that king at least the old Frankish officer called "*referendarius*," or holder of the king's signet, had a place on the list of Anglo-Saxon ministers, and was the same dignitary as the one who, in the time of Edward the Elder, was called chancellor.

From this view Kemble entirely dissents. The charter relied on by Lappenberg is, so Kemble holds, a glaring forgery, and all trustworthy history, so he says, leads to the conclusion that the office of "*referendarius*," or "*apocrisiarius*," does not make its appearance till the reign of Edward the Confessor, a consequence, among other things, of that king's well-known predilection for Norman customs. We must beware, says the author of "*The Saxons in England*," of giving too much importance to the introduction of this official into Edward's Court, and be careful not to confound him with the great functionary whom we now call the Lord High Chancellor.<sup>1</sup>

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<sup>1</sup> See Kemble, vol. ii. ch. iii. pp. 112-115.

## LECTURE X.

### *THE ANGLO-SAXON NOBILITY AND THE CLERGY.*

Nobility among the Saxons—Quære whether Nobility by Birth was known and recognised—The Ealdorman and the Heregeata or Heriot—The more Modern Dignity of Alderman: his Position, Duties, and Privileges—Review of the Subject-matter hitherto Discussed—The Influence of the Church and the Clergy on the Political and Social Life of Anglo-Saxon England.

IN my last lecture I drew attention to the rise and progress of royalty in England, and to the rights, privileges, and official dignity of the Anglo-Saxon king.

I now proceed to the subject of nobility as exhibited in the early times now under discussion.

According to Lappenberg (vol. ii. p. 382, Bohn's library edition, 1884), nobility by birth was not observable among the Anglo-Saxons, save in the case of descendants of the military king or of the sea king. But Kemble, in his chapter on "nobility by service" (vol. i. ch. vii.), seems to assume not only the existence of nobility by birth as an established notion, but as a fact of importance; for he speaks of the old national nobility of birth sinking into a lower level under the steady advance of the royal power, through the assistance given it by the "gesith," or unfree members of the old Teutonic "comi-

tatus," and he also speaks of nobles by birth becoming absorbed in the ever-widening whirlpool. According to Pearson ("History of England," vol. i. p. 113), there were three great ranks of the earliest Anglo-Saxon society—the noble by birth, the noble by service, and the free; to which, after the conquest of England, would be added the free by service, and the slave.

Possibly nobility by birth among the earliest Anglo-Saxon people draws its source from the military or sea king, and it is not improbable that in course of time the numbers of their descendants would increase so much as to form a considerable body of nobles by birth, the æthelings of the Anglo-Saxon communities. Be that as it may, shortly after the conquest of England nobility by service made its appearance. The result of this was the gradual establishment of a class of feudal nobles, closely attached to the king. Although unfree and dependent upon the king's bounty, gratitude, or forbearance, and bound closely to him, yet in time they grew into such power and influence, "that the offices which had passed from the election of the freemen to the gift of the Crown were conferred upon them, and the ealdorman, duke, geréfa, judge, and even the bishop were at length selected from their ranks." <sup>1</sup>

Of far more importance, from a political and administrative point of view, was the office of "ealdorman," or "duke," the "heretoga," or ruler and leader of an army. As Mr. Kemble shows in his chapter on this dignity (vol. ii. ch. iv.), the name itself marks the high esteem in which

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<sup>1</sup> Kemble's "Anglo-Saxons," vol. i. ch. viii. p. 184.

the possessor of the office was held. Ealdor, or aldor, the man of princely dignity, the oldest, that is the most dignified, personage. One of the "yldestan witan," or eldest councillors, he stands out pre-eminently as next in importance to royalty.

*Heretog, dux, princeps, comes*, are the terms given to this individual by the Latin writers and compilers of annals and charters; but by the Saxon chroniclers, and in the Saxon chronicles, "ealdorman" is the word used.<sup>1</sup>

According to Mr. Kemble, who has reviewed the history of the office with the closest criticism, the word ealdorman is not introduced into the laws before the beginning of the eighth century. He thinks that Kent had no such officers, even at that date. "Duke" was the title in Wessex and Sussex, and "prince" in Northumbria; and duke it remained until the death of Edmund Ironside.

In the preamble to the laws of King Ine (A.D. 690) we meet with the term, thus, "so that none of our ealdormen nor of our subjects should hereafter pervert these our dooms"; and from that time, says Kemble, we have the means of tracing the institution with some certainty.

The dignity and high estimation of the office are marked by three distinguishing features. First, the appointment to it in its then title, as afterwards, belonged solely to the Crown, as the declaration of the

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<sup>1</sup> For an historical account of the "Comes" and "Dux," from Constantine's time, including a notice of the "Magistri militum," see Palgrave's "History of the English Commonwealth," vol. i. ch. x. pp. 358-360.

Council of Beccanuld, A.D. 696, shows. "It is for the king to appoint the princes, the prefect, or the duces."<sup>1</sup> Secondly, the office itself was inseparable from a "shire" or "gá." It was a political as well as territorial office, and as such its holder stood at the head of the justice of the county, possessing full power of trying suits, and of executing civil and criminal process. His authority in the county was executive as well as judicial. Like the Frankish "graf," he was the military leader of the *levée en masse*, i.e. the *posse comitatus* of the freemen. He was a noble of the first rank, having armed retainers of his own. To him was submitted the internal regulations of the shire, as well as its political relation to the whole kingdom, with the "shire geréfa," "wic geréfa," "tun geréfa," and "king's geréfa," subordinate to and acting on his orders. Thirdly, his "weregild" and oath were marks of the value put upon him. If at first his weregild ranked him only with the general class of the nobility, in this respect later on he was rated on a level with the bishop, and above the ordinary nobles. By the Northumbrian law he was rated at more than thirty times the value of the "ceorl." In the same proportion was the value of his oath.

In addition to all this, his house was in some sort a sanctuary. For breach of peace therein the breaker was liable to a heavy penalty. For "burhbryce," or violation of his castle, the fine was eighty shillings, a very heavy penalty in those days. Two pounds was the fine for breach of his "borh" or surety, and his "mundbyrd" or protection; and for "fihtwite" (that is the penalty for

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<sup>1</sup> See as to this, Kemble, vol. ii. ch. iv. pp. 147-149.

drawing a sword and fighting in his presence), the offender had to pay one hundred shillings.

"Thus," says Mr. Kemble, "the position which his nobility, his power, and his wealth conferred upon him was a brilliant one. In fact, the whole executive government may be considered as a great aristocratical association, of which the ealdormen were the constituent members, and the king little more than the president." Like the German *graf*, the revenues of the "ealdorman" were derived from fines appertaining to the office, and from a third of the fines and several profits accruing to the several courts which came within his jurisdiction, as well as from other royal sources of income.

Connected with this office of ealdorman is an ancient Germanic custom, which, brought into England by our Teutonic settlers, survived the Saxon period of rule, and reappeared in an entirely altered form under the feudal conquerors of our country. I allude to the "*heregeata*," *heriot*. Among the ancient German invaders of Europe it was the practice for the king to deliver to the senior as well as to the other military chiefs their arms, a war-steed and buckler, a sword and spear. These presents of arms, which at first doubtless were the voluntary offerings of the leader of the band as a reward for or incentive to valiant service in the field, afterwards were converted into perquisites which the leader was bound to allow. As a counterbalance to this compulsory generosity on his part, the chief obtained the privilege of claiming and receiving back the gift on the death of the receiver.

In Knut's time a fixed relief out of the heritage of the deceased was established, payable by the heirs, and

for an "ealdorman" this consisted of four saddled and four unsaddled horses, four helmets, four coats of mail, eight spears, eight shields, four swords, and two hundred mancuses of gold. In later times the payment or redemption on the death of the last possessor was converted into a pecuniary burthen on the successor.<sup>1</sup>

According to Stowe, the civic dignity of alderman is connected with and traceable from the ancient Saxon office of "ealdorman." His account of the more modern office is interesting.

"Alderman," he says, "answers to senator among the Romans, yet in aldermen the old age of the mind is more to be regarded than of the body, and the gravity of manners rather than antiquity of years. Whence, in the old laws of King Knut and other Saxon kings, he was called alderman who is now called judge or justiciary.

"These aldermen were also called—as well in name as in honour—'barones.' For it is found about the year A.D. 1350, that in the burial of aldermen that ancient, honourable custom was observed, viz. that in the church where an alderman was to be buried, one armed with his arms, bearing in his hand a standard on an horse with trappings, carried aloft his shield, helmet, and his other arms with the standard, as the manner yet is of burying the lord barons. But by reason of the sudden and frequent changes of the aldermen, and often plagues, by little and little the custom vanished in London.

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<sup>1</sup> See Lappenberg, "Anglo-Saxon Kings," vol. ii. ch. xix., ed. 1884 (Bell & Sons). Kemble, "History of the Anglo-Saxons," vol. i. ch. viii. p. 178.

“But by this it appears how great honour was in ancient times given to aldermen. For none were accepted for alderman unless he were without deformity in body, wise and discreet in mind, wealthy, honourable, faithful, free, and of no base or servile condition, that no disgrace which might happen unto him on account of his birth might thence redound on the rest of the aldermen or the whole city. And hence it came to pass that none was made apprentice, or at least admitted into the liberty of the city, unless he was known to be of gentlemanlike condition; or if, after he had been made free, it came to be known that he was of servile condition, for that very thing he lost the freedom of the city. As it happened to Thomas le Bedel, Robert le Bedel, Alan Underwode, and Edmond Ray, butchers, who in the mayoralty of John le Blount lost their freedom because they acknowledged they held lands *de villenagio* of the Bishop of London, and they remained without the liberty of the city.” (Lib. c. fo. 88.)

Formerly the city wards took their names from aldermen; *i.e.*, the particular ward designated in the books and maps by its ancient name, was spoken of in ordinary parlance from year to year as the ward of, say, Thomas de Rasing, or Simon Hadestock.

Among their privileges was exemption from being put into inquisitions, for they were judges of the city.

The mayor, sheriffs, and aldermen were all clothed alike, in honourable furs with a lining of silk. For an assault upon an alderman the punishment was striking off the hand of the offender.

They were irremovable from their office save for some great offence or enormous crime, involving forfeiture of

freedom of the city. They were exempt from serving the office of constable of the county district in which they might chance to have a residence. (See the case of John Abdy, reported "*Croke's Cases*," p. 110.)

But for further learning on the matter, I must refer to "*Stowe's Survey*," book v. chs. v. and viii.

And now I have traced the progress of social improvement and of civilization in England through its various stages and in its varying chances and fortunes. I have shown you its early state of primitive patriarchal life, when the British clans lived under their chiefs in the dark forest and amid the swamps and morasses of the country.

This clearly was a condition of things that never could have lasted long. The vicinity of our islands to the Continent of Europe would have saved them from a fate that the great land across the Atlantic or the islands in the North Pacific have refused to submit to. And so the work of restoration and advancement was carried on by that old conqueror of the world—the Roman.

Yet under his rule, had it continued, England would have been in a sorry plight, at least so far as national spirit and political life are concerned.

It would have been impossible for the conquered people to have borne for ever the yoke which the centralizing, despotic power of the Roman loved to impose. With all the advantages that his genius for colonizing and settling imported with his government, a revolt against such an authority must have come in time.

Under the Teutonic immigrants, and later on under the Saxon conquerors who succeeded the Roman, the progress

of the country in the path of social improvement went on. But there was much in the Anglo-Saxon character that needed a stimulant, and that stimulant was found in the infusion of another northern temperament introduced among us by two sets of fierce invaders, the Danes and the Normans.

Of them and the influence they exerted on our Saxon habits and Saxon temperament it will be my duty to speak.

Yet before I proceed to consider the Danish settlement perfected into conquest under Knut, and the Norman invasion ripened into a permanent occupation under William, I must say a few words about the influence, silent yet sure, upon the national, political, and local life of England, of an institution to which I have already drawn your attention in a former lecture—I mean the Church.

Now if one fact is more distinct than any other in the history of the world, it is this, that, look back as far as you will, and cast your eyes over what part of the civilized world you will, you will find the presence of a priestly caste acting upon and influencing—to some the action and influence may be odious, to others it may be grateful,—but acting upon and influencing largely the history and life and political character of the countries of which they formed a part of the constitutional as well as the social machine.

The priestly order meets us at every stage of our inquiries into the social life of this and all other nations. Unfortunately with the priesthood we too often find priestcraft combined.

As I have already pointed out in the first of these lectures, the populations of Europe, especially the poorer portions, have experienced the benefits that the ecclesiastical corporations were able to confer upon them, and many ameliorations of the hard lot of the labourer and the serf have been obtained by the action of the clergy.

On the other hand, one cannot be blind to the fact that the clerical body has not been free from faults, most patent at times in the history of European social and political progress,—intolerance, lust of power, greed of wealth, and even unchaste living among them.

The history of Latin Christianity as recorded in the pages of Milman is not altogether pleasant reading for the pictures it gives us of sectarian hatred and sectarian cruelty.

Yet it must, I think, be admitted, when one reflects upon the work that the Church took in hand and was able to carry out, that in the social, as well as in the political aspect of the subject, not only on the Continent of Europe, but in this island also, the Church has conferred benefits upon the people and the land of a high order, and to refuse to recognise them would be an act of narrow-minded and harsh prejudice.

From a social point of view, then, the Church has done good work in the cause of order and improvement, mental, moral, and material.

Every one who has read anything of the history of literature knows well the desperate plight into which learning had fallen from the end of the fifth to the close of the sixth centuries. Its utter destruction was arrested by the ecclesiastical body, who with all the gross igno-

rance that affected many of them, yet did by their Latin services and by their organized hierarchy keep, to use Hallam's words, "a slender but living stream flowing" in the worst of times.

If on the one hand Gregory I. (the founder of papal supremacy), and the clergy of his time, set their faces against secular learning, on the other hand Benedict, by the injunction he laid on the brethren of his order to read, copy, and collect books—not insisting that religious books only should be the object of their labours,—gave an increased stir to the spread of general learning, and thus became the means of preserving and multiplying classical manuscripts at the hands of men whose habits of life and monastic leisure afforded them ample opportunity to rescue literature from the gloom into which it had passed.

In England, as early as the sixth century, a little glimmer of light was perceptible in the Irish monasteries, and to that country schoolmen and students resorted.

But it was to Theodore, Archbishop of Canterbury (A.D. 668), and to his companion, Adrian, that this country is indebted for its first strong step in the path of literature and learning.<sup>1</sup>

Others succeeded him, like the Venerable Bede and Alcuin (Bede's equal in ability, but not in erudition); but to Theodore is England indebted for the first beginning of civilization and social improvement in that part where all improvement begins, viz., the cultivation of

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<sup>1</sup> Hallam, "The Literature of Europe," vol. i. ch. i. § 7; and Southey, "Book of the Church," ch. vi. p. 48.

the mental powers, of which literature and learning are such powerful instruments for good.

In addition to the benefits which the clerical body have conferred upon England in this respect, those which they have afforded to the development of a moral tone must be added. Upon this topic I need not dwell, as I have already adverted to it sufficiently for my purpose in a former lecture.

Let me only add a few words upon the subject of the material and political gains that England has derived from the ecclesiastical institutions which the favour or the superstitious feelings of the rulers of the land helped to foster.

From a material point of view, the monasteries must be looked upon as the sources of all that is good in the country districts.

To them we are indebted for the settlement of these districts, and for the spread of agriculture and horticulture; to them we owe the establishment of markets and fairs in many parts that would, without them, have been little better than wastes; and to them the serf owed a large portion of the emancipations that were wrung from royalty and from the feudal lords.<sup>1</sup>

Wherever a monastery was settled, the cultivation of the land and a comparative security for the cultivators followed, and in their train there followed also comfort and some degree of wealth.

Moreover, whenever a monastery was founded, the

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<sup>1</sup> See as to this subject, Kemble's "*Anglo-Saxons*," vol. i. ch. viii. pp. 211-213.

miserable peasant, and the still more miserable serf, obtained masters who were not indifferent to the principles of justice, to the spirit of benevolence, or to the voice of mercy.

The amelioration in the life of this lower class thus promoted by the clergy was extended to such of them as lived in the domains of the king; for the same cause that influenced the ecclesiastical owners of land influenced the sovereign also, viz., the desire, or rather the necessity, of obtaining a superiority over the lay lords, and so, both from the advantages derived from the ecclesiastical alliance, as well as from the wish to establish their legislative power beyond their own immediate demesnes, the kings accorded to their bond-labourers privileges similar to those that the clergy had succeeded in obtaining.

If from an intellectual, moral, and material point of view the influence of the Church upon the settlement of society in these early times of history was so conspicuous, it was no less remarkable from the political point of view.

I quote Bishop Stubbs in confirmation of this, and to what better or sounder authority can I refer?<sup>1</sup>

“The reduction of the whole Church organization of the seven kingdoms into the National Church was the work of Theodore of Tarsus. The introduction of the forms and decencies of ecclesiastical councils into the meetings of the nations gives its peculiar character to the English Witenagemot; and the union of ecclesiastical

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<sup>1</sup> “Documents Illustrative of English History,” Introduction, p. 8.

and civil organization throughout the land impresses a perpetuity on the divisions and sub-divisions which before had been determined by the occupancy of the family or tribe.

"The 'mark,' 'vicus,' or 'township' becomes the sphere or duty of a single priest, and later is called his parish; the kingdom becomes the diocese of a bishop; the whole land the province of the metropolitan. The rival archbishops head rival nationalities. The greater dioceses are sub-divided, on the lines of the earlier under-kingdoms, in six of the seven states, and when Wessex late in the day begins to subdivide, she follows the same idea. The organism of Church and State advances side by side; the shires become the archdeaconries, and the hundreds the deaneries of a later age; the archdeacon or bishop presides with the ealdorman and sheriff in the shire-moot; the parish priest leads his people to the hundred-moot, or even to the *fyrd*.<sup>1</sup> The Witenagemot has its most distinct and permanent constituent in the clergy, bishops, and abbots."

Now, it is an historic fact that the introduction of Christianity, and the spread of its tenets in early Anglo-Saxon times, began and was effected not where religious enthusiasm as a general rule makes its appearance, that is among the lower classes and the oppressed, as was the case in the early days of Christendom, and more especially in the suffering Romanic nationality, but with the Anglo-Saxon king and the Court. The phenomenon is a strange one, but it is to be accounted for by the

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<sup>1</sup> The military array for the defence of the country.

thoroughly aristocratic character of society in the Germanic tribes.

Hence it happened that the highest offices of the Christian priesthood in England were from the first coveted and obtained by the Anglo-Saxon nobility, who therefore willingly followed the king's example when his conversion was effected.<sup>1</sup>

But then two consequences ensued—neither of them injurious to the settlement of social life: first, nowhere else was the priest so good a citizen as in England, and this resulted from the close connection of the State and the Church; and, second, nowhere else was the tendency to turn Church endowments into private property so early manifested as in England.

Thus Christianity and the Church worked side by side, and helped onward the cause of the making of England intellectually, morally, and politically, and each exerted a special influence upon English social life.

The revolution which Christianity effected on the individual life of England is as conspicuous as the benefits flowing from that revolution were large.

A new law of conduct, new habits, new conceptions of life and society, were forced on Englishmen. More especially were these visible in the home itself. Christianity curtailed the freeman's powers over wife and child and slave, for it forbade infanticide, it forbade the putting away of wives, and it denounced and stopped cruelty to the serf.

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<sup>1</sup> Pearson, "History of England," vol. i. ch. viii. p. 33.

It was even bold enough to deny to the king his heritage of the blood of the gods.

Slavery and war were declared by it to be evil, manual labour was upheld as a virtue. Revenge was denounced, gluttony and drunkenness were attacked as sins. Rest from toil on Sunday and holy days was enjoined. Marriage was invested with a holier and more lasting character than it had possessed under the old faith. Baptism was substituted for the old "dragging through the earth," and child and parents received a new kin at this Christian ceremony. The burial rite was altered, and a common resting-place for all in the village churchyard was substituted for the solitary mound on the headland or hill.

Thus through life men were taught to look on one another as members of a community knit together in brotherhood, and after life were laid side by side in a common resting-place as friend and brother.<sup>1</sup>

Not less remarkable was the influence of the English Church upon English society in another direction, and that was the change effected by the unmonastic clergy, the Seculars, as they were termed, by the substitution of the parochial organization for monasticism.

This is so well described by Mr. Green, that I will quote his remarks at full length:<sup>2</sup> "It was only by slow degrees that the parish or kirkshire—as it was then called—attained a settled form. The three classes of

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<sup>1</sup> Green, "The Conquest of England," ch. i. pp. 8, 9; Pearson, "History of England," vol. i. ch. xx. pp. 319–322; and cf. Gibbon, "Decline and Fall," ch. xlv., *ap. finem*.

<sup>2</sup> Green, "The Conquest of England," ch. i. p. 13.

churches which we find noted in the laws mark so many stages in the religious annexation of the land.

"The minster or mother church, which levied dues over wide tracts, recalled the earlier days when the Church still had a monastic form, and its preachers went forth to evangelize the country.

"The next stage was represented by the manorial church; the establishment through this wide area, by lord after lord, of churches on their own estates, for the service of their dependents, the extent of whose spiritual jurisdiction was at first coincident with the estate itself.

"A third class of small churches without burial grounds represented the growing demands of popular religion. From Bæda's letter to Archbishop Egberht, we see that the establishment of manorial churches, that is, of what we commonly mean by a parochial system, was still far from complete, at least in Northumbria, in the middle of the eighth century, but in the half century that followed it had probably extended itself far over the land."

An attempt was also made to provide a settled livelihood for the parish priests in the "tithe," or payment of a tenth part of the farm produce by their parishioners (see *Laws of Æthelred*, Thorpe, i. p. 319; *Laws of Alfred and Guthrun*, Thorpe, p. 171), but the obligation to pay this was still only imperfectly recognised, and the repeated injunctions of kings and synods, from Æthelstan downwards, bear witness by their repetition to the general disobedience.

It is probable that the priest as yet relied far more

for his subsistence on his dues, on the "plough alms" after Easter, "the church shot"<sup>1</sup> at Martinmas, and the "light shot" thrice in the year, as well as the "soul shot" that was paid at the open grave.

"Nothing is more remarkable in this extension of the ecclesiastical system than the changes wrought by it upon the original unit of English social life. The stages by which the township passed into its modern form of the parish, and by which almost every trace of its civil life successively disappeared, are obscure and hard to follow; but the change began with the first entry of the Christian priest into the township.

"The village church seems often to have been built on the very mound that had served till then for the gathering of the tunsfolk. It is through this that we so often find in later days the tun-moot held in the churchyard or ground about the church, and the common practice even now of the farmers gathering for conference outside the church porch before morning service, may preserve a memory of this freer open-air life of the moot before it became merged in the parish vestry.

"The church thus became the centre of village life. It was at the church door, as in the moot, that banns were proclaimed, marriages and bargains made. Even the fair or market was held in the churchyard, and the village feast, an institution no doubt of immemorial antiquity, was held on the day of the saint to which the church was dedicated. While the priest himself, as its custodian, displaced more and more the tun-reeve or elder.

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<sup>1</sup> Shot—*scot*, *sceatte*—tax or contribution.

"It was he who preserved the weights and measures of the little community, who administered its oaths and ordeals, who led its four chosen men to hundred-moot or folk-moot, and sometimes even to the field. The revolution which was transforming the free township into the manor of a lord aided in giving the priest a public position.

"Though the lord's court came to absorb the bulk of the work of the older tun-moot,—the regulation and apportionment of land, the enforcement of by-laws, the business of its police—yet the tun-moot retained the little that grant and custom had not stripped from it. And it is thus that in its election of village officers, of churchwarden and way-warden, as well as in its exercise of the right of taxation of the township for the support of the church and poor, we are enabled to recognise in the parish vestry, with the priest at its head, the survival of the village moot, which had been the nucleus of our early life."<sup>1</sup>

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<sup>1</sup> For a more complete and exhaustive account of the influence of Christianity and the Church on the intellectual, moral, political, and social phases of life in Anglo-Saxon England, the reader is referred to Southey's "*Book of the Church*," ch. iv.; Kemble's "*Anglo-Saxons*," vol. ii. ch. viii. pp. 373-375; Green's "*Making of England*," ch. vii.; Green's "*Conquest of England*," ch. i.; and Pearson's "*History of England*," vol. i. ch. xx.; and, for a full account of Theodore and the good work done by him in Britain, see Bede's "*Ecclesiastical History*," chs. ii. v. and xvii. pp. 2, 10, and 26; and the "*Anglo-Saxon Chronicle*," at pp. 324-328, in Bohn's *Antiquarian Library* edition; Southey's "*Book of the Church*," ch. vi. pp. 48-51; Green's "*Making of England*," ch. vii., pp. 330-337; and Kemble's "*Saxons in England*," vol. ii. ch. viii. pp. 364-370.

## LECTURE XI.

### *THE DANISH INVASION.*

The Danish Invasion—The Danes, their Characteristics—Reasons why the Danish Invasion was Successful—Benefits conferred on the National and Social Life of England by the Danish Invasion—Christianity and its Effects upon Anglo-Saxon England—Anglo-Saxon Codes—History of the Development of Law—Penal Legislation in Relation to Archaic Society—Distinction between Teutonic Ideas and those of Later Times in the matter of Offences and Crimes—The Law of Theft in Ancient Legislation.

THE subject to which I now shall advert is the Danish invasion, and its effect upon the political and social life of England. For upwards of 200 years these Norse pirates vexed the land, that is, from the year A.D. 787 (when a few adventurers sailed to Dorchester and slew the town reeve) to the year A.D. 1014, when, under Knut, their supremacy was established.

They ravaged, burnt, and destroyed with a fury that marked the presence of men who had framed the profession of murder and rapine into a civil polity.

Sir Walter Scott, in his poem, "Harold the Dauntless," has described, in language well suited to the men and their deeds, their fierce onslaughts, and the terror inspired by the presence of their ships.

It was not merely the stirring joy of battle that roused

these adventurers to action, but it was a supreme contempt for death. "I fear not death," said Sigurd, the pirate, when he saw his comrades butchered around him. "I fear not death, since I have fulfilled the greatest duty of life; but I pray thee not to let my hair be touched by a slave or stained with blood." So, too, Siward of Northumbria, whose profession of Christianity deterred him from suicide, stood armed and erect out of his bed, in his last moments, that at least he might not die huddled up like a cow. And thus another pirate chief met death: at his own request, when he felt that the last hour of his life was coming, his faithful followers wrapped him in his armour, and so clad, lying on the deck of one of his galleys, he was sent afloat, to die alone on the element where the best part of his life had been spent.

Against a race of men animated with such a spirit of adventure and stirred by such reckless courage, it would have been hard for those upon whom their blows fell to make head; but there were some special reasons why the incursions of the Danes in England met with a more decisive success than generally falls to the lot of mere predatory invaders.

In the first place, the land was in dire confusion consequent on the feud of Angle and Saxon, which was always breaking out, and that at a time when unity was imperative.

In the next, the institutions of the Norsemen in their own country resembled those of the Anglo-Saxons as to their main features. The same distinctions of family, similar popular assemblies, similar money measurements for crimes and offences, the same form of judicial process,

viz., the duel, and the same acceptance of the frith-guild system, were features of social life that enabled the two sets of people, the attackers and the attacked, to settle down gradually together, and in process of time to be united into one community. Moreover, the necessities of a seafaring life and of incessant war developed the military qualities of daring and discipline among the Norsemen to an extent that has perhaps never been equalled.

Nor must it be forgotten, as Mr. Pearson points out,<sup>1</sup> that the war that these sea-kings carried on was not one between themselves and a national army, but between them and a local militia. To the Saxons defeat was ruin, to the Norsemen only a temporary check from which they soon rallied, for their armed bands and their fleets were recruited from every nation of the north. Dacians alongside of Goths, Norwegians of Swedes, and Vandals of Frisians were led to battle under one chief.

Now, was there no benefit conferred upon the social and national life of England from all this?

Certainly there was. Energy and courage were infused into the people from the example that their invaders set them.

Even though the commonwealth was shattered, the people were regenerated. The reckless daring of the Norseman, and his very contempt of death, carried with it and encouraged a punctilious love of truth resembling honour, and the pursuit of arms, though it excluded labour from the ordinary pursuits of life, involved a severe discipline, not unproductive of advantage to the community.

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<sup>1</sup> Pearson's "History of England," vol. i. ch. x. p. 159.

Thus the Anglo-Saxon character was materially affected—I think I may say affected for the better—by the fresh introduction of northern habits, customs, and mental qualities.

But from a political point of view there is one result of the Danish conquest which must never be forgotten, and which Mr. Pearson has, with his usual acuteness, seized on as worthy of note. I will give you the extract in his own words.

“Although the more prominent aspects of the struggle between Christendom and the Danes was the question which of two religions should prevail, the political results of the contest are not less important.

“The greatness of Charlemagne’s character can scarcely be over-rated, but his ideas and policy were Byzantine. He aimed at reuniting the nations of the world under one empire, at crushing local freedom in every state. Had he succeeded more entirely,—if his captains, sated with conquest, had been capable of loyal allegiance,—if his sons had been more united, or one of them truly imperial, the path of the world would have been arrested. The monotonous unity of the Roman Empire would have been reproduced at a lower level of civilization; and thought and faith, imprisoned within a system whose confines were the limits of the earth, would have beaten out their lives against the bars of their cage.

“We owe it to the divine fury of the Danes that we were saved from that calamity—the plunderers became conquerors, and carved half a dozen kingdoms out of the Europe that was to have been one.

“Even as regards England, we may see that the country

was not yet ripe for consolidation; its tendencies were always to form a world apart, and to separate itself from the struggles and progress of its neighbours. At the very moment when it was lapsing into centralization and weakness, its provinces were roused into new life by the necessity of defence."<sup>1</sup>

To the Danish invasion, then, England owes much in its progress towards social improvement, political settlement, and national development. Courage in resisting danger, energy in action, and discipline, mental as well as physical, were some of the moral results of the clashing of Saxon and Norseman in the strife of two hundred years that ended in Knut's triumph.

The creation of a single united England, stirred into national consciousness and firmly bound into national union, whose fruition was a resurrection of that pride in the English name which the house of Alfred had begotten, was another gift that England owes to its Danish settlers.

And as a political gain, we must reckon the complete development of its institutions, whether administrative, fiscal, or judicial, which had been growing into shape under the West Saxon kings, and which, as I shall show when I come to read and comment on the laws of Knut, was the work which he took in hand and successfully carried out.

I have thus traced the events that led to the formation and settlement of social life among our Anglo-Saxon forefathers, and I have arrived at a period of change in one

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<sup>1</sup> Pearson's "History of England," vol. i. ch. x. p. 158.

part of that social life that marks a noteworthy era in a very important branch of it—I mean in the history of its jurisprudence. For as I am about to read to you extracts from the laws of the Anglo-Saxon kings, I am advancing to that sharply defined epoch of jurisprudence, viz., the era of written laws or codes.

That which preceded it was the era of customary law, and as the change from customary law to codes indicates a very marked alteration in the progress of a community, I shall premise my comments upon the written laws I have to put before you with some remarks upon customary law and written law, in order that you may understand what advances in settled order a community has made when it arrives at the era of codes.

And here I will begin with saying that the author from whom these remarks will be drawn is one who in his able and valuable treatise on “Ancient Law” has done so much for the right appreciation of the history of law in all its vicissitudes and changes.

In tracing out the historical development of law, Sir Henry Maine, taking as the best and readiest source of information the old Homeric poems, “considered not as a history of actual occurrences, but as a description not wholly idealized of a state of society known to the writer,” uses as a starting point, or as the first stage in the progress of the history of law, the decision of a personal agent, a king, whose sentence in the matter of disputes referred to him was assumed to be the result of direct inspiration, and whose “themistes,” or awards, are judgments, not laws.

In the simple mechanism of ancient society, as Sir

Henry shows, there would, as a rule, be parities of circumstances, and so in the succession of similar cases awards would also as a rule follow and resemble each other.

Here, then, we have the germ or rudiment of custom, and so we arrive at the second stage of Law's history, viz., Custom.

"Themis, award," "Dike, a fluctuation between custom or usage and judgment," are the only two jural terms met with in the Homeric writings; "Nomos, a law," has no place in it.<sup>1</sup>

From the epoch of kingly rule we come everywhere in Europe to the epoch of oligarchies, and so gradually to the establishment of a political aristocracy, and then we find ourselves face to face with "an important point for the jurist," which is this, "that these aristocracies become universally the depositaries and administrators of law. They seem to have succeeded to the prerogatives of the king, with the important difference that they do not appear to have pretended to direct inspiration for each sentence. What they do claim is to monopolise the knowledge of the laws, to have the exclusive possession of the principles by which quarrels are decided."<sup>2</sup> So that now we have arrived at the epoch of Customary Law, which at its early stage is confined entirely for its precepts to a privileged minority, whether a caste, an aristocracy, a priestly tribe, or a sacerdotal college,—and which is true unwritten law.

Against this system of distributing justice men would

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<sup>1</sup> See Appendix, Note M.

<sup>2</sup> Sir H. Maine, "Ancient Law," ch. i. pp. 2-6 and p. 12.

naturally wage strenuous war as society advanced towards improvement and as numbers increased.

The jealousy of the majority at the sight of so much power lodged in the hands of a small number of individuals, influenced by those exclusive feelings that necessarily attach to a privileged class, and above all the desire to see as well as to be told of the customs that were crystallizing into law, would force on a change, and that change was from an unwritten to a written system.

So now we come to another sharply defined epoch in the history of jurisprudence, viz., the era of Codes, of which the XII. Tables of Rome is the most famous specimen.

The exact value of this change consists in the publicity given to the legal rules; in the knowledge furnished by them to everybody as to what he was to do and what he was not to do; and in the fact that the particular laws of each particular tribe or people have found a better depositary and a better security for preservation than the mere memory of a number of persons, however strengthened that memory might be by habitual exercise.

The process thus sketched whereby arbitrary decisions to which Divine inspiration was ascribed grew into customs, and so by graduated steps ripened into customary law, is visible in the early history of our own country.

Many years, however, passed after the departure of the Romans and the disappearance of Roman civilization and Roman law ere written law made its mark upon Anglo-Saxon life.

To Æthelberht, who ruled over the great kingdom of

Mid Britain between the years A.D. 577-617, belongs the honour of having given his people a code.

His reign is remarkable for two events, which bear on the matter I am now noticing. First, the successful mission of Gregory, whose Roman abbot, Augustine, spread the tenets of the gospel in the south-eastern district; and secondly, the conversion of the king himself to the Christian faith.

As Mr. Green points out in his narrative of the first of these events,<sup>1</sup> Canterbury, the earliest city-centre of the new England, became the centre of Latin influence. "The Roman tongue became again one of the tongues of Britain, the language of its worship, its correspondence, and its literature. But more than the tongue of Rome returned with Augustine. Practically, his landing renewed that union with the Western world which the landing of Hengist had all but destroyed. The new England was admitted into the commonwealth of nations. The civilization, arts, letters, which had fled before the sword of the English conquerors, returned with the Christian faith. The fabric of the Roman law indeed never took root in England, but it is impossible not to recognise the influence of the Roman missionaries in the fact that codes of the customary English law began to be put into writing soon after their arrival. Of yet greater import was the weight which the new faith was to exercise on the drift of the English towards national unity. It was impossible for England to become Christian without seeing itself organized and knit together into a single life by its

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<sup>1</sup> "The Making of England," ch. v. pp. 221-224.

Christian organization, without seeing a great national fabric of religious order rise in the face of its civil disorder." <sup>1</sup>

With Æthelstan's reign there is started a new period of improvement in the social life of this country. By his conversion to Christianity, the notion of a higher moral influence began slowly to affect its institutions and laws, and by the introduction of a code the whole conception of law was changed. "Its sacred character, as well as the mystery which had veiled its sources in the memory of the 'lawman,' was taken from it, the mere writing them down fixed and hardened the customs themselves, and took from them their power of adaptation and self-development. But then this result followed, that change in the laws could henceforth only be wrought consciously, and on grounds of reason or necessity, which questioned or set aside the authority they drew from the past." <sup>2</sup>

What I shall do will be to append to the short account I shall give of the events in the reigns of some of the Anglo-Saxon kings extracts from their written laws, adding to them such explanations of the special object of the laws themselves, and of the terms used in them, as may be necessary; and, by way of preface, I will say why I think it useful, as well as instructive, to put these extracts before you.

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<sup>1</sup> See as to the history of this mission and the character of Augustine's work and life, Bede's "Ecclesiastical History," book i. chs. xxiii.-xxxiii., and book ii. chs. i.-iv. (Bohn's Antiq. Library edition).

<sup>2</sup> Green's "Conquest of England," ch. i. p. 20.

The reason is that I know no better way of getting at the spirit of our old Anglo-Saxon life.

For just as in the later periods of English history it is difficult to meet with any particular books, any authoritative work or works, which will exactly exhibit the real inner history of English life, so in this part of it, even with the help of the authorities I have so frequently referred to, we do not always find all we want.

Now in the written laws of a country, and in England in the statute book, we have the means of extending our inquiries and in getting a real insight into the makings of a nation. Mr. Froude, in his essay on "Suggestions on the Best Means of Teaching English History,"<sup>1</sup> has dwelt upon the value and importance of this source of information with remarkable skill and with great effect.

He shows us how a whole picture arises out of the code or the statute book of the old English nation, its life, its habits, its character, its occupations, amusements, hopes, fears. "The political economy, the education, the relations between man and man, between landlord and tenant, between employer and employed, are all laid out before us there in unconscious simplicity, with the duties wherein all such relations were supposed to be involved, and the degree in which such duties were fulfilled."

If, then, I put before you extracts from our early Anglo-Saxon Codes, I shall be making use of the most serviceable as well as the most trustworthy witnesses of the rise and progress of social life in England.

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<sup>1</sup> "Oxford Essays," 1855.

Another remark I would make, by way of introduction to the Anglo-Saxon laws, and here I cite one of our best and most zealous workmen in the cause of English constitutional history.<sup>1</sup> It is this: "Of the existing Anglo-Saxon laws, those of Æthelbert, Hlothære, and Eadric, Wihtræd, Ine, Edward the Elder, Athelstan, Edmund, and Edgar are mainly in the nature of amendments of customs. Those of Alfred, Æthelred, Knut, and those described as Edward the Confessor's, aspire to the character of codes; but English law, from its first to its latest phase, has never professed an authoritative, constructive, systematic, or approximately exhaustive statement, such as was attempted by the great compilers of the civil and canon laws, by Alfonso the Wise or Napoleon Bonaparte."

I begin with Æthelbert's compilation (A.D. 600). His laws are little more than a record of the customary fines for penal offences, with a provision for the legal status of the new Christian priesthood.<sup>2</sup> Out of ninety clauses, forty-one fix the fines for injury to various parts of the body. Almost all the laws refer to violent attacks on person or property. There is no mention of trade or agriculture. The Church is referred to in the first clause only.

Now here it may be asked, how it is that in the earliest attempt to give to a community the special advantage of a written system of law, a code, so much space should

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<sup>1</sup> "Documents Illustrative of English History," by W. Stubbs, M.A., edition 1870, part ii. p. 70.

<sup>2</sup> Green's "Conquest of England," ch. i. p. 21.

be devoted to offences, and so little to rules relating to property, none to succession or to contract.

The answer, briefly stated (and you will find it expressed in fuller language in Sir H. Maine's "*Ancient Law*"<sup>1</sup>), is that in all the known collections of ancient law, more especially the Teutonic codes, including those of our Anglo-Saxon ancestors, the attention bestowed on the law of offences is out of all proportion to that devoted to the civil law. The more archaic the code, the more full and minute is its penal legislation.

Something no doubt, by way of explanation, is due to the violence habitual to the communities which for the first time reduced their laws to writing; but the better and more natural reason lies in the fact that the laws of these older phases of society are drawn from and adapted to the old habits and customs of life. "The law of persons, which is nothing else than the law of status, will be restricted to the scantiest limits as long as all forms of status are merged in common subjection to the paternal power or to the tribal claims. Rules relating to property and succession can never be plentiful so long as land and goods devolve within the family or the tribe, and, if distributed at all, are distributed within its circle. From this cause the law of contract will not make its appearance in the first instance at all, and later on only when the moral notions on which contract depends are appreciated with sufficient strength to compete with and eventually oust from its former supremacy the elaborate machinery of oaths and compensation."

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<sup>1</sup> Maine's "*Ancient Law*," ch. x.

In speaking of the Teutonic codes just above, I used the expression, *law of offences*, advisedly. I avoided the term *criminal law*, because the law which they exhibit is not true criminal law, at least in the sense which we apply to it.

To our modern notions the line of separation between offences against the State or community, and offences against the individual, is always kept in view when we mean to distinguish between criminal law and the law of torts or wrongs. But the penal law of ancient communities is not the law of crimes; it is the law of wrongs. The person injured there has his remedy against the wrongdoer, and the wrong is atoned for by compensation in the shape of money damages.

Offences which we look upon as crimes were, in the older times of which I am speaking, regarded as torts, giving rise to an obligation or *vinculum juris*, and requited by a money payment.

Nowhere was this more strongly brought out than in the laws of the Germanic tribes. Without an exception they describe an immense system of money compensations for homicide, and with few exceptions as large a scheme of compensation for minor injuries. "Under Anglo-Saxon law," says Mr. Kemble,<sup>1</sup> "a sum was placed on the life of every freeman according to his rank, and a corresponding sum on every wound that could be inflicted on his person, for nearly every injury that could be done to his civil rights, honour, or peace, the sum being aggravated according to adventitious circumstances."

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<sup>1</sup> Kemble's "Anglo-Saxons," vol. i. p. 277.

For the reasons given, torts or wrongs occupy a large space in ancient codes. But though the law of tort is more marked in the manner described in the Teutonic and Anglo-Saxon Codes, and the law of crimes, so far as concerned the community, was not as yet an important branch of penal legislation, still, you must not be under the impression that a conception of wrong done to the State was wanting in early society; for we know that when the freemen of the Teutonic races assembled for legislation, they also claimed authority to punish offences of peculiar blackness or committed by persons of exalted station. And of this nature was the criminal jurisdiction of the Anglo-Saxon Witenagemot.

Moreover, the State did affect to assert its own right to strike the offender;<sup>1</sup> for, as we shall see even so early as *Æthelred's Code*, in one particular class of offences, in addition to compensation for the injury, a pecuniary fine, payable to the king as head of the State, was imposed.

How it came about that the important change known to much later days was effected, viz., that the doctrine that the chastisement of crimes belonged in a special manner to the sovereign as the representative and mandatary of the people, displacing the old belief that it was the business of the collective community to avenge its own wrongs by its own hands,—how this, I say, came about, it may be my business to show hereafter.

Another query presents itself. How comes it that the law of theft occupies so important a position in the early Anglo-Saxon Codes? and why, in settling the damages,

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<sup>1</sup> Kemble's "*The Saxons in England*," vol. i. ch. x. pp. 269-271.

did the framers of them take as their guide the measure of damages likely to be exacted by an aggrieved person under the circumstances of the case?

The answer to the first query is, that property was of very great importance to the tribe itself, from the fact that a community of interest in the property of the individual members of the tribe was a dominant factor in the calculation of the wealth of the tribe.

The reason for the second query is to be found in the fact that the earliest administrators of justice simulated the probable acts of persons engaged in a private quarrel. The ancient lawgiver doubtless considered that the injured proprietor, if left to himself, would inflict a very different punishment when his blood was hot from that with which he would be satisfied when the thief was detected after a considerable interval; and to this calculation the legal scale of penalties was adjusted. This principle is exactly what we meet with in the Anglo-Saxon Codes, where they suffered a thief chased down and caught with the booty to be hanged or decapitated on the spot, while they exacted the full penalties of homicide from anybody who kills him after the pursuit has been interrupted.<sup>1</sup> "Distinctions such as these," says Sir H. Maine, "bring home to us very forcibly the distance of a refined from a rude jurisprudence."

Moreover, from the community of interest that existed in the tribe or body politic, the tribe, *i.e.*, the State, conceived itself to be wronged. Therefore the popular assembly struck straight at the offender with the same

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<sup>1</sup> Maine's "Ancient Law," ch. x.

movement that accompanied its legislative action. Hence you will find, when you come to look at these old laws whose spirit I am now discussing, that they make clear another remarkable feature, viz., that the earliest criminal tribunals were merely subdivisions or committees of the legislature.

## LECTURE XII.

### *ANGLO-SAXON LAWS.*

The Laws or Dooms of Æthelbert—The Laws or Dooms of Hlothære and Eadric—Explanation of Anglo-Saxon Terms used in them—The Laws of Wihtræd—Reasons why they deserve Notice—The Laws of Ine—Importance of these Laws—King Eadberht's Reign Noteworthy—Bede and Egberht: their Influence on the Social Life of Anglo-Saxon England—The Pontifical of Egberht—The Reign of Offa—The Concilium Legatinum—Analysis of the Concilium, and its Importance.

IN this and some following lectures I intend to read and explain, where necessary, extracts from the published laws of some of our Anglo-Saxon kings, and I begin with the earliest specimen, those of king Æthelbert.

Of the laws or "dooms" established by king Æthelbert (A.D. 600), there are ninety in all, though only one is noticed by Bishop Stubbs; but then that one is important in this respect, that it is connected with the constitution itself, for the summoning the "leod," or people, was an event of no small interest to the community.

All were bound to obey the summons; all were under protection in going and coming to and from the assembly, and brawling or disturbance at the meeting was punishable—as the law shows: first, by bot, *i.e.*, compensation in damages to the party injured; second, by fine to the head of the State.

With one or two exceptions, Æthelbert's laws are regu-

lations against injury to life and limb, and against other acts of violence.

By the first law the property of the Church is particularly safeguarded in the shape of penalties for injuries thereto, graduated in amount according to the rank and position of the ecclesiastical owner of the property. In the case of a bishop, elevenfold; in that of a priest, ninefold; of a deacon, sixfold; of a clerk, threefold; in that of God and the Church, twelvefold. For injury to church frith (*i.e.*, to the right of sanctuary), the fine was twofold, that is, double the amount of fine payable for an invasion of the ordinary frith (or peace).

The second law is the one I have noted above as cited by Bishop Stubbs, and it runs thus: "If the king call his 'leod' to him, and any one there do them evil, let him compensate with a twofold 'bot' and fifty shillings to the king." (This penalty to the Crown was called "wite.")

Of the laws or "dooms" of Hlothære and Eadric (written A.D. 680), there are sixteen. They commence with this preface: "Hlothære and Eadric, kings of the Kentish men, augmented the laws which their elders had before made by these 'dooms,' which hereafter say"; and then follow the laws. Half of these laws are aimed at acts of violence. The rest relate to complaints in a suit, provide regulations for chapmen,<sup>1</sup> and impose fines for man-stealing. In none of these laws is the Church

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<sup>1</sup> Chapman, *i.e.*, one who buys or sells, a trader or merchant. The word comes from "ceapan," to buy. These regulations appear again in some of Ine's laws. As to chapman, see Chaucer, "Canterbury Tales": "The Shipmanne's Tale."

mentioned. Only one law is cited by Bishop Stubbs, viz., law 8. I shall advert to and explain the terms used in it presently. There are one or two others that deserve notice, and so I add them to this law 8.

I begin with law 6, which runs thus: "If a husband die, wife and child yet living, it is right that the child follow the mother (that is, that she be its guardian), and let 'borh' (that is, surety or pledge) be given to him, from among his paternal kinsmen to keep his property till he be X. years of age.

"L. 8. If one man make plaint against another in a suit, and he cite the man to a 'methel' or 'thing,' let the man always give 'borh' to the other, and do him such right as the Kentish judges prescribe to them.

"L. 11. If one man calls another perjurer in another 'flet' (that is, the habitation of a 'ceorl'), or shamefully bespeak him with abusive words, let him pay a 'shilling' to him who owns the flet, vi. 'shillings' to him to whom he said the words, and xii. 'shillings' to the king.

"L. 12. If a man remove a stoup from another where men are drinking unoffendingly, according to ancient usage, let him pay a 'shilling' to him who owns the 'flet' (that is, the house where they are drinking), and vi. 'shillings' to him from whom he removed the stoup, and xii. 'shillings' to the king."

These laws of Hlothære and Eadric are noteworthy as containing in their list one (l. 8) which, for the first time introduced into our jurisprudence an attempt to define the position of plaintiff and defendant in a suit at law, and also marked the form of the inceptive process in such suit, viz., citation to the public assembly.

"Borh" means surety, and is equivalent to plegium or plegius. "Methel" means an assembly, a "gemot," and "gemot" means a meeting. The "methel" here spoken of, says Thorpe, is the same as the "hundred gemot" of later times. "Thing," which may be the same as the old Teutonic word "Thinx," was in the old capitularies of the Frankish kings used for the common council of the people. Between "Gemot" and "Thing" there seems to have been very little difference. Thorpe asserts that it was in later days the court of the "Tithing." "Thing" also meant "plea," from "Ding" and "Denghen," a lawsuit; and so "Denghen," to litigate.

From the laws of Hlothære and Eadric, with whose examination I have last been engaged, I proceed to those put forth by Wihtræd.

Of Wihtræd's reign (from A.D. 694 to 725) but little is recorded. He ruled over Kent (and Kent was among the most civilized portions of England<sup>1</sup>). Still, even in Kent we read of the great men setting the doom of the "folk-moot" at defiance. For this reason, as a matter of necessity, the folks' justice was made to pass into the king's justice; and so, as a new scope was given to the justice of the king, we find the king's power attaining to larger dimensions, and its judicial activity acquiring a larger development.

Hence the Saxon kings—from being at first one of a small number of petty kings or chieftains, then by the process of consolidation of countries which was going on down to the commencement of the seventh century an

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<sup>1</sup> Shakespeare: 2nd part of *Henry the Sixth*, act iv. scene vii.

actual sovereign, head of one independent kingdom out of at least eight other similar kingdoms, and then the ruler as well as leader of a nation for which he had obtained predominance—at last arrived at the position of an extensive powerful monarch, a king whose power was widely extended, a “bryten-wealda.”<sup>1</sup> Therefore in time the English king, from being the chief of the great landowners, came to be looked upon as the origin and source of title and power, as well as the chief leader and ruler.

Hence, at the first great council held at Beccanceld (A.D. 694), where were assembled the archbishop, bishop, abbots, abbesses, and many wise men, we read of the king, after defining the rights and privileges of the churches, thus announcing the law of the land: “It belongs to the king to appoint the *principes*, *præfectos seu duces*, or, as the Anglo-Saxon chronicle phrases it, the eorlas and ealdormen, schire-revan, and doomsmen throughout the land.”<sup>2</sup>

“King Wihtræd, also, at Berkhamstead (A.D. 695), with the advice of his great men and by their suffrages, decreed the dooms that at that council were framed, adding them to the lawful customs of the Kentish men.” Of these dooms or laws there were twenty-eight in all. By the two first of them it was enacted that the Church should have freedom from imposts; that the king should be prayed for and revered without command and of free

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<sup>1</sup> See as to this, Kemble's “Anglo-Saxons,” vol. ii. ch. i.

<sup>2</sup> Anglo-Saxon Chronicle, A.D. 694, at p. 331; in Bohn's Anti-quarian Library.

will; also that for "mund-byrd" (or right of guardianship over those under its protection) the Church should pay fifty shillings to the king. By another law (l. 8) it was proclaimed that in the case of solemn manumission at the altar, although the emancipated serf was made folk-free, yet the inheritance, the weregild and the mund of his family should remain to the lord, whether the new freedman continued to reside within the Mark or not.<sup>1</sup>

These laws of Wihtræd's deserve notice for the proof they give of the wide and distinct difference existing at the time between the several ranks of the community, and of the immense influence and power which the clergy had acquired.

The last of Wihtræd's laws is a remarkable one, as exhibiting the unsettled state of the times and the suspicious temper of the communities. It enacts "that if a man comes from afar, or a stranger goes out of the highway, and he then neither shouts nor blows a horn, he is to be accounted a thief, either to be slain or to be redeemed."

The country to which the notice of the old Saxon laws now takes us is Wessex, and the king whose laws—or rather extracts from whose laws—I shall presently give, is Ine, "the son of Cenred, and, like his predecessor Ceadwalla, a descendant of Cutha, the son of Ceawlin."<sup>2</sup>

Wessex at this time had recovered strength and renown. The losses of territory that she had suffered since

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<sup>1</sup> See as to this, Kemble's "Anglo-Saxons," vol. i. ch. viii. p. 220.

<sup>2</sup> The Anglo-Saxon Chronicle, A.D. 688 (Bohn's Antiquarian Library, at p. 330).

Ceawlin's time had been repaired, and under Ine's rule, "not only the whole land south of the Thames, but Essex also, together with London, acknowledged Ine as lord."<sup>1</sup>

Ine's fame is noteworthy for three reasons at least. In the first place, he was a bold and successful warrior; Kent, East Anglia, and Mercia felt the vigour of his arm and experienced the force of his skill as a general.

But it was not as a soldier and leader of armies only that he gained renown. As a prudent administrator of affairs, he is worthy of praise, and as a patron of learning and a friend of one whose name stands not far below that of the venerable Bede himself—I mean the Bishop Ealdhelm—Ine deserves mention.

Above all, the ruler of Wessex ranks high among the Saxon kings who preceded Alfred as a lawgiver and legislator. By his command a collection of laws was made for Wessex, and this collection is, with the exception of those published by the Kentish kings, the earliest known to us among the Anglo-Saxons.<sup>2</sup>

In this collection of laws there are two or three matters of interest as evincing the change of feeling that had come upon the land. In the first place, as the preamble shows, we see the authoritative position that the Christian faith had gained. Next, and as a consequence thereof, the power to which the Church had attained; and then the remarkable fact of the positive recognition of a moral sentiment hitherto unknown in the land.

Ninety years after the conversion of the first Saxon

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<sup>1</sup> Green's "Making of England," ch. viii. p. 386.

<sup>2</sup> Lappenberg's "Anglo-Saxon Kings," Bohn's Library Edition, vol. i. ch. xv. p. 331.

king, Christianity asserts its influence over the kingly office and in the council chamber. The king is spoken of as "king by God's grace"; and the council is described as "a large assembly of God's servants." Then we see the bishop introduced as a "teacher and counsellor"; and, further, we read of "the health of our souls," and "just law and just kingly dooms" as matters of importance to all.

Moreover, we have in Chapter 11 a noteworthy piece of legislation in the cause of humanity, an attempt to put a stop to the cruel practice of selling a man into slavery.

These, then, are the extracts from the laws of King Ine (*circa* A.D. 690).

*"Wessex; Ine; Preamble to the laws."*

I, Ine, by God's grace, King of the West Saxons, with the counsel and with the teaching of Cenred my father, and of Hedde my bishop, and of Eorcenwold my bishop, with all my ealdormen and the most distinguished 'Witan' (wise men) of my people, and also with a large assembly of God's servants, have been considering of the health of our souls, and of the stability of our realm, so that just law and just kingly 'dooms' (judgments) might be settled and established throughout our folk; so that none of the ealdormen, nor of our subjects, should hereafter pervert these dooms.

Cap. 8. If any one demand justice before a 'scirman' or other judge, and cannot obtain it, and a man (*i.e.*, the defendant) will not give him 'wedd' (pledge or gage-radium), let him make 'bot' with xxx. shillings, and within seven days do him justice.

Cap. 11. If any one sell his own countryman, bond or free, though he (*viz.*, the person sold) be guilty, over sea, let him (the seller) pay for him according to his 'wer' (*i.e.*, according to the pecuniary value of the person sold).

Cap. 36. Let him who takes a thief, or to whom one taken is given, and he then lets him go, or conceals the theft, pay for the thief according to his 'wer.' If he be an ealdorman, let him forfeit his shire (*i.e.*, lose his position as magistrate in the shire), unless the king is willing to be merciful to him.

Cap. 39. If any one go from his lord without leave, or steal himself away into another shire, and he be discovered, let him go where he was before, and pay to his lord lx. shillings.

Cap. 45. 'Bot' (*i.e.*, amends, reparation) shall be made for the king's burg-bryce<sup>1</sup> and a bishop's, where his jurisdiction is, with cxx. shillings; for an ealdorman's, with lxxx. shillings; for a king's thegn's, with lx. shillings; for a 'gesithcundman,' having land, with xxx. shillings; and according to this make the legal denial.

Cap. 51. If a 'gesithcundman,' owning land, neglect the 'fyrd' (that is, the summons to the military expeditions), let him pay cxx. shillings, and forfeit his land; one not owning land, lx. shillings; a ceorlish man, xxx. shillings, as 'fyrdwite' (that is, penalty for neglecting the 'fyrd')."<sup>2</sup>

In the work to which I have so frequently referred,<sup>3</sup>

<sup>1</sup> Burg-bryce was literally the breaking of a fortified place. Here it means the violation of a castle or dwelling.

<sup>2</sup> See Appendix, Note N.

<sup>3</sup> "Documents Illustrative of English History," by Bishop Stubbs.

among the illustrative extracts from the old Saxon laws, there are two passages selected by the author ascribed to the years A.D. 760 and A.D. 787. I propose to notice them both, as they mark distinctly two features of interest from a political as well as social point of view. I mean the continuing influence of the Church in affairs of State, and the reference to moral sentiment as a matter of importance in the administration of justice.

These two passages are not extracted from any body of laws emanating from the Crown or Council of the State, but are ecclesiastical utterances.

The first is taken from the Pontifical of Egbert, Archbishop of York. The second is a very short passage from the twelfth chapter of the Legatine Council, which apparently was held at Celeyth<sup>1</sup> (see Anglo-Saxon Chronicle, A.D. 785).

Before I cite and comment on them, I have something to say about the times, the localities, and some of the events connected with the passages cited by Bishop Stubbs.

To begin with the first date, that of the year A.D. 760, or thereabouts. The extract from the Pontifical of Egbert speaks of a newly consecrated king. This was probably Osulf, who succeeded to the throne of North Britain on the retirement into a monastery of his father, Eadberht (in A.D. 758).

Eadberht himself was a man of remarkable ability.

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<sup>1</sup> In Wilkins, vol. i., at p. 145, it is called "Concilium Calceuthense." The learned authors, Haddon and Stubbs, of "Councils and Ecclesiastical Documents" (in vol. iii. p. 444), give the name as "Celeyth," or "Chelsea."

At no period of time had the government of Northumbria been in more vigorous hands. His reputation abroad stood so high that his friendship was eagerly sought for by the Frankish king Pepin. It was wise policy on the monarch's part to be on good terms with the ruler of North Britain. An alliance with that part of England in the event of a war between Pepin and the southern portion of our island would, of course, be of material service to the Frankish king:

Under Eadberht, the northern division of this country had become the political as well as the religious centre of the fame and power of the Anglo-Saxon race. Under Eadberht also, learning and religion had gone on hand in hand in a grand progress of advancement and of gain to the country.

One name stands out pre-eminently in the annals of the times. A name that no lover of learning, no believer in the beneficial influences of morality and religion upon social life, would pass over, or, naming, would omit to dwell on with reverence. I mean Bede, "the Venerable Bede," as he is called in history, whose life, though spent in Jarrow, was spent so well that after ages dwell with fitting regard upon the man, and record his name and virtues with more than mere respect, even with fond recollection.<sup>1</sup>

"The father of English learning," as Burke calls him, he spent his life at Jarrow in the service of the Church and in the pursuit of knowledge. "All my life," so runs his own narrative, "I spent in that same monastery, giving

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<sup>1</sup> Wordsworth's "Ecclesiastical Sonnets," part i. sonnet xiii.

my whole attention to the study of the Holy Scriptures, and in the intervals between the hours of regular discipline and the duties of singing in the church, I always took pleasure in learning or preaching, or writing something."

To Bede we owe the revival of a taste for classical learning which, let its opponents say what they may against it, will, I venture to hope, long continue to be regarded as a sound and useful foundation of education.

Above all, we owe to Bede, not merely the first real history of the English nation, but the first true model of how that and all history should be written, never forgetting his own words, "If, in what I have written, any one finds anything not delivered according to the truth, I humbly entreat the reader that he will not impute the same to me, who, as the rule of history requires, have laboured sincerely to commit to writing such things as I could gather from common report for the instruction of posterity."<sup>1</sup>

Death came upon him as he was finishing the last and dearest of all his works, the version of Saint John's Gospel into the English tongue. The story is thus told by his pupil Cuthbert in a letter to his fellow reader Cuthwin.<sup>2</sup>

"To us he seemed very well to know the time of his departure, and so he spent the night awake in thanksgiving; and when the morning appeared, that is Wednes-

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<sup>1</sup> "Ecclesiastical History," book i., Preface, p. 3 in Bohn's Antiquarian Library Edition.

<sup>2</sup> Preface to the "Ecclesiastical History," in the same edition, at pp. xviii. to xxi.

day, he ordered us to write with all speed what he had begun. . . . There was one of us with him who said to him, 'Most dear master, there is still one chapter wanting; do you think it troubles you to be asked any more questions?' he answered, 'It is no trouble, take your pen, and make ready and write fast.' . . . Having said much more, he passed the day joyfully till the evening, and the boy above mentioned said, 'Dear master, there is yet one sentence not written.' He answered, 'Write quickly.' Soon after the boy said, 'The sentence is now written.' He replied, 'It is well, you have said the truth. It is ended. Receive my hand into your hands, for it is a great satisfaction to me to sit facing my holy place, where I was wont to pray, that I may also sitting call upon my Father.' And thus on the pavement of his little singing, 'Glory be to the Father, and to the Son, and to the Holy Ghost,' when he had named the Holy Ghost he breathed his last, and so departed to the heavenly kingdom."

Thus died on the 26th May, A.D. 735, "the first among English scholars, the first among English theologians, and the first among English historians, the monk of Jarrow, whose zeal for English learning enabled English learning to strike its roots deep into English soil,"<sup>1</sup> and deep into all true English hearts has the recollection of his good deeds struck its roots.

From Bede and his efforts to improve the culture and the moral tone of his countrymen, I pass to the man who next to him, nor yet without success, strove to make

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<sup>1</sup> Green, "The Making of England," p. 404.

smooth the path of learning, and who, following in Bede's steps, worked with strength and skill in the cause of the social improvement of his country. Among the learned men and the earnest toilers of the day, the monk Ecgberht deserves record. His early life was spent in Ireland, where he lived for many years. From Ireland he passed over to Hii or Iona. There, according to Bede, his special mission was to bring the monks of that island into the proper observance of the rules and regulations of the mother Church.

Then he attracted the notice and favour of the Pope Gregory. By him Bede's scheme of religious reformation was carried out in one feature of it, viz. the revival of the Archbishopric in the North of England, and from Gregory Ecgberht obtained the papal recognition of his appointment to the see of York, as Archbishop, in the year 735.

With Ealdfrith, the ruler of Northumbria (himself a man of learning and study), Ecgberht quickened the intellectual temper of that part of England, and lived to see the result of his labours in years of peace and order, of literary and artistic development; so that Northumbria became the life and centre even of Western Europe.

The consequence of Ecgberht's elevation to the Archbishopial dignity was not merely the religious independence of the northern kingdom added to its political importance, but a close connection between the see of York and the northern throne.

By the determined efforts of Ecgberht to stir into warmth the sparks of learning which Bede's zeal had kindled, the intellectual improvement of the populations

of the northern parts of England continued to progress. York, which in Wilfrid's time had been the religious centre of the district, through Ecgberht's energy became the capital of the north, as distinguished for its culture and moral advancement as for its wealth and material power.

By the Archbishop's energy the little wooden baptistery which, in the days of Paulinus, had been the beginning of the great cathedral,<sup>1</sup> and which Wilfrid (in A.D. 670) had endeavoured to restore and improve, was enlarged and decorated so as before his death to be a rival to the churches of Ripon and Hexham.

Ecgberht founded a school which was attached to the church, supplying it with a library whose fame was known throughout the length and breadth of the land, and was the subject of Alcuin's learned eulogium. In that school Ecgberht was a diligent teacher. To it scholars flocked from every country, and to the teacher as well as to his school belongs the glory of having rescued learning from the degradation into which it had fallen in other parts of England as well as in the Frankish kingdoms across the water. The school long survived its founder.

Among the makers of the mental and moral life of England, Ecgberht well deserves a high place; and as I am describing the history of social life in England, it would be unbecoming in me to pass over unnoticed one to whom learning and culture in England owe so much.<sup>2</sup>

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<sup>1</sup> Bede's "Ecclesiastical History," book ii. ch. xiv., at p. 96, in Bohn's Antiquarian Library Edition.

<sup>2</sup> Green's "Making of England," ch. viii. pp. 405-408. There is a very slight reference to this School of York in Hallam's "Litera-

These are the words of the "Pontificale Egberti Archiepiscopi Eboracensis," which I translate from the Latin version. The heading runs thus:

"Blessings upon the king recently elected. Here you may see the first mandate of the king to his people.

"It is the right of the king recently elected and raised to the throne to enjoin these three precepts on the Christian folk subject to him.

"Imprimis, that the Church of God, and that all Christian folk, observe and keep in full the peace at all times. Amen.

"Secondly, that (the king) do forbid all robbery and all evil doing throughout all ranks of people. Amen.

"Thirdly, that in all dooms the king do enjoin the observance of justice and mercy, so that God the just and merciful may shed His mercy upon us. Amen."

The second extract is taken from the "Concilium Legatinum," at the twelfth chapter. Before I cite it, I will say something first in respect of the importance from a political point of view of the document, and then in explanation of the document itself.

Its importance consists in this, that it marks in a strong manner the intimate relations existing at the period of its publication (A.D. 786) between the papal see and the King of Mercia Offa.

The period of time now referred to had been an eventful one for Rome, especially during the thirty years prior to

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ture of Europe," vol. i. part i. ch. i. p. 6; but a much fuller and more eulogistic one in Guizot's "History of Civilization in Europe," 22nd lecture, vol. ii. pp. 232, 233 (Bohn's edition).

the date above-mentioned. Pepin the Short, the son of Charles Martel, had been anointed King of the Franks, with the assent of Boniface, acting as legate of the papal see. A few years later Pepin repaid his debt to Rome by crossing the Alps and delivering the Pontiff of Rome from the dangerous attacks of the Lombards, whose power for mischief was a few years later entirely destroyed by the conquering arms of Pepin's great son Charlemagne.<sup>1</sup>

Meanwhile an intercourse had been going on between the Frankish Court and Britain through the missionaries sent from Rome to England. This was productive of advantage to the papal see in the opportunity it afforded of strengthening the hold which the ecclesiastical administrators of the Church had already got over the English Court and in English political affairs.

The early part of Offa's reign had been a period of constant and fierce warfare against the West Saxons and against the Welsh. In the year 786 A.D. he succeeded, by force of arms, as well as by diplomatic skill, in bringing about a settlement of the country on terms advantageous to himself.

On one project he was steadily bent. That was to take as the permanent basis of the political order in Britain its threefold division. This he strove to effect by erecting a third archbishopric at Lichfield. Whatever might have been the special object that Offa had in view in carrying out this scheme, the result, political as well as ecclesiastical, was of no small consequence and no small gain to the papal power.

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<sup>1</sup> Gibbon, "Decline and Fall," ch. xlix.

As Mr. Green points out, it brought England into new and more direct relations with Rome. It enabled the pope to send legates, who assumed the right to remould the fabric of the English Church, and in return for the pope's sanction to Offa's design, it obtained for the papal see a yearly contribution in alms and lights payable by the king and his successor.

Thus it introduced a claim on the pope's part of something very much resembling a tax leviable for the benefit of a foreign potentate.

The political consequence of Offa's attempt to raise a third archbishopric, had it been completely carried out, would have been of no less weight. It would "have strengthened the isolation of mid-Britain, and have cast a fresh hindrance in the way of any fusion of Englishmen into a single people."

Fortunately for the independence of England and its freedom from the control of an exacting foreign prelate, as well as for its future political well-being, Offa's project was unsuccessful.<sup>1</sup>

I have now to give a short account of the document from which the extract I shall presently append is taken. Bishop Stubbs<sup>2</sup> calls it "*Concilium Legatinum*." It appears to have been the report to the pope by the two papal legates, George and Theophylact, of the proceedings

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<sup>1</sup> For the events and political aspect of this period of Anglo-Saxon history, the reader is referred to Green's "*Making of England*," ch. viii. pp. 417-428; to Pearson's "*History of England*," vol. i. ch. lx. pp. 142-146; and to Lappenberg's "*Anglo-Saxon Kings*" (Bohn's Library Edition), vol. iii. ch. xiii. pp. 287-299.

<sup>2</sup> "*Documents Illustrative of English History*," p. 62.

that took place at a solemn council held, either in the year 786 or 787, at Cealchyth or Celeyth, probably Chelsea, and called by Wilkins<sup>1</sup> "Concilium Calcenthense."

The mission of these two legates was the result of urgent letters from the King Offa to the pope.

According to the Anglo-Saxon Chronicle (A.D. 785), "This year a contentious synod<sup>2</sup> was held at Cealchyth, and Archbishop Lambert gave up some portion of his bishopric, and Ecgberht was elected by King Offa; and at this time messengers were sent from Rome by Pope Adrian to England to renew the faith and the peace which St. Gregory had sent us by Augustine the bishop."

There is some doubt whether the Council of Celeyth and the Legatine Council are identical. Probably they are not.

Be this as it may, whatever has come down to us of the proceedings of one or the other is derived from the document that is set out at full length in Wilkins's collection and in the third volume of Haddon and Stubbs's "Councils and Ecclesiastical Documents."

The importance of this document consists in the fact that this is the only record of any legislation framed in Offa's time. There is evidence that a code of Mercian laws was formed or collected by him, and was in existence

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<sup>1</sup> Vol. i. at p. 145.

<sup>2</sup> There seem to have been two meetings, one of king's ecclesiastics and elders in council at Cealchyth or Celeyth, and another an ecclesiastical synod of the West Saxon, Kentish, and Mercian bishops, either at the same place or at some other site near London. See Haddon and Stubbs's "Councils and Ecclesiastical Documents," vol. iii. p. 444 (in the notes).

apparently in Alfred's reign, or known to that sovereign, but unfortunately it has been lost.

Sir F. Palgrave notices the proceedings of the "Concilium Calcenthense" at some length, and speaks of them as worthy of perusal for the light they throw upon the constitution of ecclesiastical councils when held concurrently with the secular councils of the kingdom.<sup>1</sup>

For this "Concilium Legatinum," then, as it is termed by Bishop Stubbs, we are indebted to the two legates above mentioned. They seem to have made an elaborate report to the pope of all they heard and witnessed during their stay in England, and the heads of what they reported are as follows.

The document contains twenty chapters, which profess to be decrees on the subjects set out. It commences with a preamble or *Proœmium ad Adrianum Papam*. That preamble recites the presence at the concilium of the two kings, Offa, King of the Mercians, and Chœniulphus, King of the West Saxons, the chief ecclesiastical authorities, and the elders of the land.

Then it sets out the journey of the legate George to the Court of King Oswald (this, says Messrs. Haddon and Stubbs, should be King Ælfwold), and what came of it.

Then comes the statement that the two legates have thereunder transcribed a chapter on each of the matters discussed and sanctioned at the council.

And then follow the chapters:—

Chapter I. sets out that the rules of the Nicene Council should be observed; that priests should be examined

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<sup>1</sup> Palgrave's "English Constitution," vol. i. ch. v. pp. 172, 173.

yearly in them, and that general synods are to be held for that purpose.

Chapter II. declares that baptism shall be in accordance with the canons, and explains what is the nature of the office of godfather.

Chapter III. states that every bishop is to attend the synod twice a year, and to go through his diocese once, correcting sins and denouncing the commission of sin.

Chapter IV. prescribes that the mode of life and the style of dress to be followed and used by the canons (that is the clergy living in community but not under monastic vows) are to be such as are in use among the "orientales" (the monks of Italy and Germany), and in accordance with the decrees of the pope.

Chapter V. declares that in the election of abbots and abbesses only those of approved piety and moral life are to be chosen.

Chapter VI. relates to the ordination of priests and deacons.

Chapter VII. insists on the due observance of canonical hours.

Chapter VIII. enacts that the privileges granted by the Pope of Rome are to be observed.

Chapter IX. declares that ecclesiastics are not to take refreshments surreptitiously.

Chapter X., that in the mass no minister at the altar is to appear with bare legs; that the loaf is to be *panis non crusta*; that the cup is not to be of ox's horn; and that bishops are not to meddle with secular suits.

Chapter XI. relates to the king's office and the excellence of the priesthood.

Chapter XII. sets out the subject of the election and honours of the king.

Chapter XIII. sets out the subject of the decreeing of just and righteous dooms or judgments.

Chapter XIV. contains the laws against fraud, robbery by violence, and unjust impositions upon the Church.

Chapter XV. speaks of the prohibitions against iniquitous and incestuous marriages.

Chapter XVI. declares that bastards may not succeed to an inheritance.

Chapter XVII. that tithes are to be justly and properly paid, and that usury and false weights and measures are to be forbidden.

Chapter XVIII. that vows are to be faithfully fulfilled.

Chapter XIX. states that every one is to abjure and renounce the forms of Pagan worship.

Chapter XX. speaks of renunciation of sin, of repentance, and of confession.

From this curious mixture of ecclesiastical and secular denunciations, rules, and regulations, one may, I think, draw the inference that the legates, at the time they prepared their report, had before them some, if not all, of the decrees and suggestions framed and made at the two assemblies, embodying in their missive such of the secular laws as they thought bore upon the moral side of the matters discussed by the witan.

The passage that is selected for notice by Bishop Stubbs is extracted from chapter xii., and runs thus (I give the translation):—

“In the twelfth discussion we have sanctioned this,

that in the election of kings no one allow the assenting voice of evil-doers to have any effect. Let kings be elected, in accordance with legal usage, by the chief ecclesiastics, and by the elders of the people, and only persons born in wedlock and of unstained descent."

It must, I think, be admitted, that the sentiments expressed in this document (professing to be a true report of legal enactments), the word *sanximus*, used in the chapter just quoted, and the authoritative language running through it, mark emphatically the influence obtained by the ecclesiastical powers in a country where the doctrines of the Christian faith had been so lately introduced, and for a long time had had a sharp fight for existence.

## LECTURE XIII.

### *ALFRED AND HIS LAWS.*

The Reign of Alfred—Dangers and Difficulties at its Commencement—His Administrative Capacity—Settlement of the Country under him—Founds a National Monarchy—His Legislation and Laws—Their Characteristic Features—The Shire, Tithing, and Hundred divisions of England not due to him, nor the Modern Jury System—His Laws Commented on—The Peace of Wedmore—Its Contents.

I now come to the reign of Alfred. Of this king I have already given an account, but I should like to sum up his good deeds and state his claim to be considered as the man who helped on as much as, if not more than, any other king the cause of political and social progress in England—one of the real makers of English life.<sup>1</sup>

He succeeded to the throne at a time when matters looked desperate for a Saxon monarch, and when there never was an hour at which he felt safe from an inroad of the Danes over Watling Street, or a landing of pirates in the Severn.

“Oh, what a happy man was he,” he said, “that man

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<sup>1</sup> The character of Alfred (*Ælfred*) is drawn in vigorous language and in terms of glowing eulogium by Professor Freeman. It is so well deserving perusal that the reader is specially referred to it. See “History of the Norman Conquest,” vol. i. ch. ii. § 4, pp. 49–53 (third edition revised, 1877).

that had a naked sword hanging over his head from a single thread. So as to me it always did."

Yet what he effected was to stay the progress of the Dane, to curb the pirates' fury, and to restore peace and comfort to his country.

He formed and established an army, and to do this effectually he gave a new extension to the class of the thegns, seizing on the thegnhood as the nucleus of a new military system.<sup>1</sup> He created a navy, so that in his later years his fleet was able to encounter the pirate ships of the East Anglians, and to leave to his son an English force of an hundred vessels wherewith to assert the mastery of the Channel.

He reorganized public justice, impressing upon his subjects the belief and the knowledge that justice flowed to every court from the king himself, of whose judicial power each judge was representative, and whose appeal was bound to correct or confirm the judgment of all. "It is by gift from God and from me," he said to all who claimed jurisdiction, "that you occupy your office and your rank." To him personally appeals lay from every court, and this jurisdiction he exercised through delegated judges.

"All the law dooms," says Asser, "that were given in his absence he used keenly to question, of whatever sort they were, just or unjust, and if he found any wrongdoing in them, he would call the judges themselves before him, and either by his own mouth or by some other of his faithful men, seek out why they gave doom so un-

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<sup>1</sup> See Appendix, Note O.

righteous, whether through ignorance, or ill-will, or for love or for hate of any, or for greed of gold."

He withstood the power of the Danes so successfully that he forced the Danish leader, Guthrun, into a peace,<sup>1</sup> the terms of which were most favourable to his own countrymen, and which relieved the country from the long and harassing warfare to which it had hitherto been subject. By that treaty the two nations were brought into a harmony that could never have been contemplated at the beginning of Alfred's reign. The same weregild, the same legal equality, the same freedom of commercial intercourse, the same legal process, and the same religious forms were the result of the treaty. And so Alfred had the happiness of witnessing the union of Saxon and Dane in law, in commerce, in religious observances, and in social life. London he won and settled, annexing to it that district which is now so well known as Middlesex.

He founded a national monarchy, distinct from and in every respect superior to the earlier supremacy of king over king. "At his death," runs the Chronicle,<sup>2</sup> "he was king over all the 'Angel cyn,' except that part that was under the yoke of the Danishmen." The old tribal jealousies were subordinated to the sense of common protection, and a notion of national existence began to give life and vigour to the new conception of a national sovereignty.

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<sup>1</sup> At Wedmore, July, A.D. 879. For the analogy between this peace and that concluded at Clair-on Epte between King Charles and Duke Robert of Paris on the one hand, and the Norman Rolf on the other, see Freeman's "History of the Norman Conquest," vol. i. ch. iv. pp. 166-187 (3rd edition, 1877).

<sup>2</sup> A.D. 901, Anglo-Saxon Chronicle (Bohn's Antiq. Edition, p. 366).

But his grandest triumph was in the conquests he made in the intellectual part of the work entrusted to him ; and what that triumph was only those can tell who take the trouble to read the history of the times, and read his own words. "I remembered also I saw before it had all been ravaged and destroyed, how the churches throughout all England stood filled with treasures and books, and there was also a great multitude of God's servants."<sup>1</sup>

He restored learning, rebuilt the churches, founded libraries, invited to England learned men, endowed places of religion and learning, cultivated literature, and improved the language of his countrymen by translations from the best of the old authors.

In short, he was a man among men ; a king among kings ; and, above all, an Englishman, heart and soul. Royal benefactor and royal regenerator of his country, Alfred stands out in the list of great and good men.<sup>2</sup>

I have now to speak of Alfred's legislation, and of the laws which were framed under his authority for the government of the country under his sway.

These laws form two collections, and represent two special features. The one set consists of the general body of laws under which the newly united divisions of Kent, Mercia, and Wessex were administered. The

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<sup>1</sup> Preface to his translation of Gregory's Pastoral.

<sup>2</sup> For more full accounts of Alfred and his times, the reader is referred to Green's "Conquest of England," ch. iv. ; to Pearson's "History of England," vol. i. ch. xi. ; to Lappenberg's "Anglo-Saxon Kings," vol. ii. chs. iv. and v., to Hallam's "Middle Ages," vol. ii. ch. viii. part i. pp. 263-286 ; and especially to Freeman's "History of the Norman Conquest," vol. i. ch. ii. § 4, pp. 49-56 (3rd edition, revised 1877).

other set consists of the rules that were framed on the successful termination of the war with the Danes, and that under the designation of Alfred and Guthrun's Peace (A.D. 879) marked emphatically the international settlement of the two nations, the Danish and the English.

The object aimed at by the king in the first collection was to form out of three distinct and somewhat varying codes one whole body of law for all his Saxon subjects. The result thereof was of a stronger and more remarkable character than was probably thought of at the time by Alfred; for it was in effect the substitution of a national law for the separate systems of tribal customs that had hitherto distinguished the codes of his predecessors.

It was the commencement of national life by the weakening of the old tribal life of the country. The task he set before him for the right administration of the lands that owned his sway he thus describes:—

“I, Alfred, King, gathered these (laws) together, and commanded many of those to be written which our forefathers held; those which to me seemed good. And many of those which to me seemed not good I rejected by the counsel of my ‘witan,’ and in other wise commanded them to be holden. For I durst not venture to set down in writing much of my own, for it was unknown to me what of it should please those who should come after us. But those things which I met with, either of the days of King Ine, my kinsman, or of Offa, King of the Mercians, or of Æthelbirht, who first among the English race received baptism, those which seemed to me the rightest, those I have here gathered together, and rejected the others. I, then, Alfred, King of the West

Saxons, showed these to all my 'witan,' and they then said that it seemed good to them all to be holden." <sup>1</sup>

Alfred's code consists of seventy-seven chapters. The subject of personal injuries is provided for in fifty-three of them. These are taken from the Kentish laws, especially those codified by Æthelbirht, with but slight change, save in the amount of the fines imposed.

The other laws are in the main borrowed from Ine's collection, whose agricultural laws, however, are omitted.

Some miscellaneous laws are added, whether taken from the last code of Offa, or framed by Alfred's witan, is uncertain.

As this code of the great king to whom our country owed so much marks an era in law-making, it is well that our attention should be directed not only to its details, but to its broad outline. Mr. Pearson has pointed this out with his usual good sense, and I cite his remarks.

"In Alfred's code we see the great principles of law distinguished from the local customs that modified their application. It may be said to consist of three parts. The first is an abstract of Hebrew law, indicating the divine foundation of society, and blending the secular view of offences as damage with the Christian view of them as sin. The state is looked upon as an ideal commonwealth, wherein the right living of man is its first object, wherein too the highest standard is indicated, to wit, the gradual extinction of slavery, the duty of hospitality, and the Christian law of love. In the second part appear the general principles of the English law.

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<sup>1</sup> Thorpe's "Ancient Laws and Institutes."

Here we find the king for the first time treated as the inviolable head of the state, against whom plotting is punishable by death. On the same footing loyalty to the great lords is established. The frank-pledge system (or individual guarantee for good conduct) is spoken of for the first time as of universal obligation. The right of feud is limited, and the powers of the courts of justice are extended. Thirdly, a copy of the ancient laws of Wessex is subjoined, no doubt to explain the customs of the south of England."

Two popular fallacies in connection with the work that Alfred did should be noticed before going further. The one is that to Alfred we owe the institution of shire, tithing, and hundred divisions. The other that we also owe to him the introduction of trial by jury.

Mr. Kemble, in his "*History of the Anglo-Saxons*" (vol. i. ch. ix. pp. 247-249), has shown clearly the groundless nature of the first assertion; and in Sir F. Palgrave's "*History of the English Commonwealth*" (vol. i. p. 243) the reader will see not only what in its earliest form and in Alfred's days trial by jury really was, but that our present form of trial by jury "has not descended to us unchanged from Alfred's days,"<sup>1</sup> but is an institution of a much later growth.

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<sup>1</sup> On this subject, see Hallam's "*Middle Ages*," vol. ii. note viii. at p. 384. As to Alfred's legislation, the reader is referred to Green's "*Conquest of England*," ch. iv. pp. 145, 146, and Pearson's "*History of England*," vol. i. ch. xi. pp. 173-175. It is not improbable that the mistaken idea that to Alfred we owe our jury system was founded on the law which prescribes as the mode of inquiring on the charge of manslaughter as well as in all suits

As it would occupy too much space were I to set out all the laws contained in this collection made by Alfred, I content myself with citing only the five chapters that are given in Bishop Stubbs's "Documentary History." They will suffice to show the style and characteristics of Alfred's legislation.<sup>1</sup>

Cap. 22. If any one at the folkmote make declaration of a debt, and afterwards wish to withdraw it, let him charge it on a righter person if he can; if he cannot, let him forfeit his "angylde" (*i.e.*, his legal value, probably equivalent to the "wer"), and (let the reeve) take possession of the "wite" (*i.e.*, the mulct or pecuniary penalty, opposed to the "bot," which was compensation to the injured party).

Cap. 27. If a man, kinless of paternal relatives, fight and slay a man, and then if he have maternal relatives, let them pay a third of the "wer" (that is the money value of the man slain), his gyld brethren a third part; for a

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where the value or amount in issue was above a certain sum, the clearing of the accused before twelve men of his own degree. But it must be kept in mind that those twelve men were not, as our jurymen are, the triers of the issue, founding their opinion upon the evidence, whether oral or written, laid before them, and by their verdict declaring the judgment which they have formed. They did not examine into the credibility of the evidence; they did not listen to any discussion of or argument on the question at issue. They were themselves the witnesses. Their verdict was in substance the examination of themselves as witnesses, and they of their own knowledge, and without the aid of other testimony, gave evidence respecting the acts in question. So that in this, its primitive form, trial by jury was only a trial by witnesses. (See Sir F. Palgrave's "English Commonwealth," vol. i. p. 243.)

<sup>1</sup> "Documents Illustrative of English History," pp. 62, 63.

third let him flee. If he have no maternal relatives, let his gyld brethren pay half—for half let him flee.<sup>1</sup>

Cap. 28. If a man kill a man thus circumstanced, if he have no relatives, let half (that is of his “wer”) be paid to the king, half to his gyld-brethren.

Cap. 38. If a man fight before a king's ealdorman in the “gemot,” let him make “bot” (compensation) with (*i.e.*, in addition to) “wer” and “wite” as it may be right, and before this (*i.e.*, as a prior payment), cxx. shillings to the ealdorman as “wite.” If he disturb the folkmote by drawing his weapon, cxx. shillings to the ealdorman as “wite.” If aught of this happen before a king's ealdorman's junior, or a king's priest, xxx. shillings as “wite.”

Cap. 41. The man who has “*boc-land*,” and which his kindred left him, then ordain we that he must not give it (away) from his “*mægburg*” (his kindred), if there be writing or witness that it was forbidden by those men who first acquired it and by those who gave it to him that he should do so, and then let that be declared in the presence of the king and of the bishop before his kinsmen.

On these laws I will make a few comments.

Law 22 shows that actions for debt could not be hastily instituted. Something like security for costs was required, the amount of which was fixed, *viz.*, the pecuniary value of the plaintiff recoverable by way of penalty by the “reeve.”

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<sup>1</sup> On the subject of the “gyld” and the “gyld-brethren,” see Kemble, vol. i. ch. ix. pp. 237-240.

Laws 27 and 28 show three things; first, that manslaughter resulting from fair fight was not treated as a criminal offence; but, in accordance with the old Teutonic sentiment, a tort or wrong to be paid for to the community; and secondly, that whilst a certain amount of compensation (in one event two-thirds, in another one-half) was payable, the slayer might in any event for a portion avoid payment by flying;<sup>1</sup> and thirdly, that in the event of his death by violence compensation had to be paid to the members of his guild (or *gyld*).

These two laws also show that the idea of the brotherhood of the particular community had taken the place of that of the old tribal connection.

Chapter 38 marks the importance in the eye of the law of the "*gemot*," or general assembly of the residents of the locality, an extension of the principle enunciated in cap. 2 of the laws of King *Æthelberht*.

Chapter 41 lays down (Mr. Kemble says *recognises the old*) doctrine that no man should have the power of alienating from his kinsmen ("*mægsceaft*") *boc*-lands whose first acquirer had entailed them in the family.<sup>2</sup>

I have already spoken at some length of the events that preceded and led to the peace of Wedmore, resulting in what is known as Alfred and Guthrun's peace; I have

<sup>1</sup> Mr. Kemble (vol. i. ch. ix. p. 238) is of opinion that this means that the slayer was to become an outlaw, *i.e.*, forfeit his land by flight if he could not pay. But from the next law this to me seems doubtful, seeing that that law recognises the legal existence of the slayer, and imposes a penalty for the benefit of his guild in the event of his death by violence.

<sup>2</sup> Kemble's "*Anglo-Saxons*," vol. i. ch. ix. p. 262.

only to add the terms in which the settlement of the two hostile forces was expressed. As will be seen from those terms, the intention of the peace, framed into a set of rules, was to provide for the association of Saxon and Dane on the footing of legal equality, and this is how these rules are declared.

A.D. 879. Alfred and Guthrun's Peace. This is the peace that King Alfred and King Guthrun, and the witan of all the English nation and all the people that are in East Anglia, have all ordained, and with oaths confirmed, for themselves and for their descendants, as well for born as for unborn, who reckon of God's mercy or ours.

(1) Concerning our land boundaries. Up on the Thames and then up on the Lea and along the Lea unto its source (near Hertford), then right to Bedford, then up on the Ouse unto Watling Street (somewhere near Stony Stratford).

(2) Then is this: If a man be slain, we estimate all equally dear, English and Danish, at vii. half-marks of pure gold, except the "ceorl," who resides on "gafol" land (land charged with dues to the state), and their "liesings" (the Danish freemen answering to the "ceorls"); they also are equally dear, either at cc. shillings. (The "wer" for these, viz., the Saxon "ceorl" and the Danish "liesing" is exactly the same, cc. shillings in each case).

(3) And if a king's thegn be accused of manslaying, if he dare to clear himself, let him do that with xii. king's thegns. If any one accuse that man who is of less degree than the king's thegn, let him clear himself with xi. of his equals and with one king's thegn. And so in every suit which may be for more than iv. mancuses.

And if he dare not, let him pay for it threefold as it may be valued.

(4) And that every man know his warrantor for men and for horses and for oxen.

The meaning of this is that every man was to find as surety a proper and approved member of his "gyld" or his association, to be responsible for his good conduct to man and beast.

(5) And we all ordained on that day that the oaths were sworn, that neither bond nor free (of our men) might go to the host without leave, no more than any of them (the Danish) to us. But if it happen that from necessity any of them (the Danish) will have traffic with us (the English), or we with them, with cattle and with goods, that is to be allowed in this wise: that hostages be given in pledge of peace, and as evidence whereby it may be known that the party has a clean back (that is, is of approved character).

## LECTURE XIV.

### *THE ANGLO-SAXON LAWS.*

Reign of Eadward (the Elder), King of the Angul-Saxons—His Laws—The Doctrine of Personal Allegiance : its Consequences on the Political Life of England—The Administration of Local Business—The Settlement of the People—The Office of Gerefa : its various kinds—Reign of Æthelstan—Reasons why worthy of comment—The Shire System—The Frithgilds—Saxon Gilds.

ALFRED died in the year A.D. 901, and Eadward, his son, succeeded him—a successor well fitted to carry on the good work that had shed so much lustre on the name of his father Alfred, and well fitted to be what he boldly declared himself entitled to be called—King of the Angul Saxons.

For twenty-four years Eadward (the Elder) fought and conquered and governed with a vigour that made his name of only less note than that of his father, because his father was one whose greatness was of larger proportions than falls to the lot of most kings.

As I have already said in another lecture, I am not attempting to give the history of Anglo-Saxon England ; I am only endeavouring to describe the leading features in the story of the settlement of English political and social life.

Were I engaged upon a survey of the times I am noting, I should have ample reason for dwelling at no small length

upon Eadward's reign. Suffice it to say that, like his father, Eadward was a warrior, and a maker of the English people. The Danes felt his power and acknowledged his supremacy. Towns such as Buckingham, Derby, Chester, Hertford, Tamworth, Warwick, Manchester (Mancunium), were raised into importance in his reign, and just before he died (A.D. 924) "then chose him for father and for lord the King of the Scots, and the whole nation of the Scots, and Reginald, and the son of Eadwulf, and all those who dwell in Northumbria, as well English as Danes, and Northmen and others, and also the King of the Strath Clyde Britons, and all the Strath Clyde Britons" (Anglo-Saxon Chronicle, A.D. 924). And so, ere he passed away, he saw the great idea and purpose of his life as king carried out—a single people ruled by a single king, and that one the King of the Angul-Saxons.<sup>1</sup>

Of Eadward's laws I shall give only the three excerpts that Bishop Stubbs has selected. The first relates to a new principle in the government of the country; which as Mr. Green has shown<sup>2</sup> operated with great force upon the political life of the people and upon its organization, and which had a material influence upon English kingship, and beyond it upon the relation of the freeman to the king of his race.

This new principle, that of "personal allegiance" to the head of the State, arose out of the struggle with the Danes, and was the result of the conquest and settlement

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<sup>1</sup> Green's "Conquest of England," ch. v. p. 217. See also as to Eadward's reign, Lappenberg's "Anglo-Saxon Kings," vol. ii. ch. vi. pp. 103-119 (Bohn's Library Edition, 1884).

<sup>2</sup> Green's "Conquest of England," ch. v. pp. 208-211.

of the conquered Danelaw. It gave a wholly new character to the relations of the people towards its ruler. It emphasized the idea so steadily kept in view by Eadward of a single people ruled by a single king. It marked emphatically the revolution "that had long been silently changing the whole structure of English society," to wit, the obliteration of the older conception of personal freedom, and in its stead the introduction of a social organization based on personal dependence. Further, it marked with equal force the recognition of the notion of lordship and protection in the place of the ancient equality, freedom, and independence which were the characteristics of old Teutonic life.

Then as to its influence upon English kingship, what the new doctrine of personal allegiance did was this: "It added to the tribal character of the kingship, which blended the king with those whom he ruled, a territorial character, in which he stood wholly apart from them, and in which the relation was no longer one of traditional loyalty, but of actual subjection."<sup>1</sup>

The revolution thus effected in the social habits and political life of England, and the alteration of all the old notions and sentiments attached thereto, was as thorough as it was general. All the members of the political and social body recognised and accepted it. Dane as well as Saxon submitted to the change; and this of necessity, for the only possible tie between the conquered Dane (to whom the idea of traditional loyalty was unknown) and the Saxon king was the acknowledgment on the one

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<sup>1</sup> Green's "Conquest of England," ch. v. pp. 208-211.

hand, and the insistence on the other, of the principle of lordship and superiority; and so, in exchange for the allegiance exacted by the king, the conquered Dane received that king's peace and protection.

As for the Saxon, to him also the change was a necessity. The century of warfare through which the land had passed, and the misery and poverty which it entailed, told with disastrous effect on the free tillers of the soil, the "ceorls." They had fared so badly from the strife that they were obliged to seek the protection of some wealthier landowner, or "thegn," and just as was the case among the allodial proprietors and the beneficiary holders of land across the water after the settlement of the Frankish invaders under the protecting form of "commendation," they were enabled to save themselves from absolute ruin, obtaining by virtue of it a security which on no other terms could be gotten. Of course the price of this assistance was the surrender of the freeholds which they once enjoyed as free owners, and which now were returned to them as quasi fiefs, burdened with the condition of military service. But the result was a change from independence to subjection, and an utter destruction of that spirit of equality which for so many years had distinguished the free "ceorlas" of the old Saxon times.

This first excerpt, then, from the laws of King Eadward is important because it accentuates clearly and distinctly the changes above specified, and shows the nature as well as the form of the oath of allegiance which, with the advice and assent of the Witan of Essex, the king published for the maintenance of the public peace. All his subjects, Saxon and Dane, accepted it.

The second of these excerpts exhibits the anxiety of the king to provide for the due administration of local business throughout the realm; and the third shows us how the people were settled in respect of their ranks and through the carrying out of the law under Eadward's rule.

*These are the Laws of Edward, circ. A.D. 920.*

King Edward exhorted his "witan" when they were at Exeter, that they should all search out how their "frith" (*i.e.* peace) might be better than it had previously been; for it seemed to him that it was more indifferently observed than it should be, what he had formerly commanded. He then asked them who would apply to its amendment, and be in that fellowship that he was, and love that which he loved, and shun that which he shunned, both on sea and land. That is, then, that no man deny justice to another; if any do so, let him make "bot" (reparation), as it before is written. For the first offence with xxx shillings, and for the second offence the like, and for the third with cxxi shillings to the king.

Cap. 11. I will that each reeve have a "gemot" (meeting) always once in four weeks, and so do that every man be worthy of folk-right, and that every suit have an end and a term when it shall be brought forward. If that any one disregard, let him make "bot," as we before ordained.

Of people and ranks:

(1) It was whilom in the laws of the English that people and law went by ranks, and then were the counsellors of the nation of worship worthy each according

to his condition—"eorl" and "ceorl," "thegen" (*i.e.*, thane), and "theoden" (*i.e.*, members of the king's courts).

(2) And if a "ceorl" throve so that he had fully five hides of his own land, church, and kitchen, bell-house and "burh-gate" (*i.e.*, a seat at the town gate, a local court of justice), and special duty in the king's hall, then was he thenceforth of "thegn-right" worthy.

(3) And if a "thegn" throve so that he served the king, and on his summons rode among his household. If he then had a "thegn" who him followed, who to the king's "utwan" (a grant by the king out of the public land) five hides had, and in the king's hall served his lord, and thrice with his errand went to the king, he might thenceforth with his "fore-oath" (the oath taken by the parties to a writ at its commencement) his lord represent at various needs, and his plaint lawfully conduct wheresoever he ought.

(4) And he, who so prosperous a vicegerent had not, swore for himself, according to his right, or it forfeited.

(5) And if a "thegn" throve so that he became an eorl," then was he thenceforth of "thegn-right" worthy.

(6) And if a merchant throve so that he fared thrice over the wide sea by his own means, then was he thenceforth of "thegn-right" worthy.

(7) And if there a scholar were who through learning throve so that he had holy orders and served Christ, then was he thenceforth of rank and power so much worthy as then to those orders rightfully belonged, if he himself conducted so as he should, unless he should misdo so that he those orders' ministry might not minister.

(8) And if it happened that any one a man in orders or a stranger anywhere injured by word or work, then pertained it to the king and to the bishop that they should make good as they soonest might.

What we now see is this: the king, lord; the freeman, the king's man; the public peace (that is, the observance of customary right between man and man), the king's peace; and the observance of this right, this peace, entrusted to the king, and by him remitted to the ealdorman, against whom breach of it is a personal offence. Moreover, we have the recognition of an important class of officials throughout the country, of whom I propose now to say something. It is the "reeve-geréfa" to whom I allude.

As to the exact meaning and etymology of the word *geréfa*, Mr. Kemble has written with much learning and research ("Anglo-Saxons," vol. ii. ch. v. pp. 151-154). He thinks the word may be referable to the word "*róf*," "*clamor*;" *róf* "*celeber*," "*famosus*," and a verb "*rófan*" or "*réfan*," to call aloud. If so, the name would denote "*bannitor*," the summoning or proclaiming officer; him by whose summons the court and levy of the freemen were called together. This explanation answers more nearly than any other to the nature of the original office, and in this sense in Æthelstan's law his district is called the "*reeve's manung*" or "*bannum*."

Whatever be the signification of the word, there can be no question as to the antiquity of the office. Whether we trace it from the old Germanic chiefs, ruling as presidents of the freemen of the "*gá*" at their meetings, the men of whom Tacitus speaks, "*qui jura per pagos vicosque*

reddunt" (Germ. xii.), or from the equally old ealdormen, "æsagas," "lahmans," of the Teutonic tribes, we note its existence long before it made its appearance by name as "geréfa" in the later Anglo-Saxon laws of Eadward.

The importance of the office is testified by its universal adoption throughout Saxon England, and the use that was made of it in every department of the local administration of business. "Wherever there was a court, there," says Mr. Kemble, "was a reeve, and wherever there was a reeve, he held some sort of court for the guidance and management of the district." Of these officials Mr. Kemble enumerates nine, and I will state as briefly as I can the nature of each official's duties.

The first is the "heáh-geréfa," the high reeve. They were always royal officers, and in some degree like the Frankish "missi," officers despatched under occasional commissions to supervise, to hold courts of appeal, and to discharge other exceptional duties. These high geréfas were not actually established officers found in all districts, nor did they form a settled part of the machinery of the government.

Next, and it may be said most important of all, comes the "scir-geréfa," the head of the "shire," "pagus," or "county;" the "scirman" or "scirigman," the bailiff.

In the earliest times he was the elected chief of the "sciregemot" or "folk moot," the county court, the people's officer. Later on he sank from this old high position, and exercised only a concurrent jurisdiction with the ealdorman or the bishop.

In Anglo-Saxon legislation the court of the "folk moot" was held under the presidency of the ealdorman and

bishop as well as of the "scir-geréfa," who was, as Mr. Kemble says, probably looked on as the ealdorman's deputy, and this his name of "vice-comes," "vice-dominus" implies.

Besides his judicial function, the "scir-geréfa" had to execute all legal process, under penalty of a fine for disobedience. He had to maintain the king's peace, to protect the abbots on all secular occasions, and to see that church dues were properly paid; viz., tithes, "church shots," "soul shots," and "plough alms." He was the usual witness of bargains and sales. He watched over the security and peace of the county. The mints and the coinage were under his superintendence. He was the principal fiscal officer in the county, levying fines, and collecting taxes. He was the proper leader of the "militia," the "posse comitatus," or "the levy of the freemen." He was nominated to his office by the king, and could be removed therefrom by the king, and to him, as well as to the ealdorman and bishop, the king's writs were directed. For his support he received a proportion of the fines payable to the king, and from the importance of his position was generally a great, if not one of the greatest, landowners of the district over which he presided.

The "cyninges-geréfa," or royal reeve, is sometimes spoken of as meaning the same as "scir-geréfa." But as Mr. Kemble suggests (for very little is really known about this official), he may have been the reeve to whom the king's tenants went for justice, and who administered "sac" and "soc" in the king's private lands. It is not unlikely, so the same writer thinks, that this royal reeve and the high reeve were one and the same.

The "burh-geréfa" was the officer who performed the duties of reeve in a "burh," or fortified town. He probably led their array, was present at sales and exchanges in them, looked after the tithes, and probably also supervised the condition of the "burh" buildings.

Like the "burh-geréfa," the "port reeve" discharged the same kind of duties in a "port" or commercial town. He seems to have been an elective officer, and in London was a personage of considerable position, holding in it the place of sheriff, and to him, with the earl and the bishop, the king's writs were directed.

The "wic-geréfa" acted in a similar manner in the "wics," villages, or towns that had grown beyond the size of a mere village though still keeping the name. He was a kind of steward of the manor, varying in dignity with the rank of his employer and the extent of his jurisdiction. "In general," says Mr. Kemble, "I should be disposed to construe the word strictly as a 'village reeve,' and especially in any case where the village was not royal, but ducal or episcopal, property."

That the term "wic" has clung to places which are now of extent and character far beyond the original quality of the place, is an example of the abiding influence of old customs. Harwich, Ipswich, and Norwich, for instance, are now-a-days far removed from anything that would lead one to suppose that they had ever been mere villages. But though the little settlement of Gippes-wic has expanded into a large, populous, and wealthy city, we are still reminded of its early beginning, and in the name Har or Hær-wic (a town which at one time returned its two members to Parliament, and not so

long ago continued to send one), we learn its origin as a military station or camp on the shore of the sea.

The "tun-geréfa," or "reeve of a tun, enclosure, farm, vill, or manor," was the bailiff of the estate; on the royal farms superintending the cultivation and keeping the peace among the labourers.<sup>1</sup> In London he was apparently subordinate to the port reeve, probably his officer.

The "swan-geréfa" was reeve of the forest court, known for a long time as the "swain-moot." He superintended the "swánas," or swains, the herdsmen and foresters, watching over the right of pasture and regulating the use which might be made of the forests. "It is probably," says Mr. Kemble, "one of the oldest constitutional offices, and may have existed by the same name at a time when the organization by marks was common over all England."

The "weal-geréfa," or welsh reeve, is spoken of once in the Anglo-Saxon Chronicle (A.D. 897): "That same year died Wulfric, the king's hors-thegn; he was also 'wealh-geréfa.'" According to Mr. Kemble he seems to have been a royal reeve, to whose care the king's (Alfred's) Welsh serfs were committed.

Such were these officers, and such their different spheres of work, position, and character. One original feature distinguishes them all, which ought not to be lost sight of. It is this, that in nearly all the places in which they appeared we must look upon them as judges in various courts of more or less importance, public or private, as it might chance to be.<sup>2</sup>

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<sup>1</sup> See as to this, "*Æthelstan's Laws*," viii. § 2; *Thorpe* i. 338.

<sup>2</sup> Kemble's "*Anglo-Saxons*," vol. ii. ch. v.

Æthelstan's reign (from A.D. 925-940)<sup>1</sup> deserves some words of comment. The extension of his power over parts of England till then not completely subdued is one reason for them. Another is to be found in his own individual qualities—in his exploits at home, in the respect he inspired abroad, and in the position he occupied in the European world.<sup>2</sup> No king of Cerdic's line could vie with him. By his victories over the Danes, the Scotch, and the Welsh, he formed an united and tribute-rendering English kingdom; and by his witenagemots, where all the hitherto divided national elements met in common council, he gave to his countrymen an idea of something like national life. By his code he made provisions for the due and proper administration of public order, for the defence of property and the protection of the weak against the old overbearing injustice of nobles and thegns, and for the development of the king's justice. Under his careful regulations against theft, for just trade dealings, for the protection of markets, and for a national coinage, the wealth of the West Saxon land grew apace, so that at his death his virtues were had in fond remembrance by his people. The stain upon his birth and the former complaints against his government were forgotten. For his success in war, his devotion to his country's welfare, his prudence and his administrative skill, Æthelstan may well be justified in looking on himself as monarch of all Britain, Angul Saxon king, and

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<sup>1</sup> Anglo-Saxon Chronicle (Bohn's edition, pp. 374-377).

<sup>2</sup> Lappenberg's "Anglo-Saxon Kings," vol. ii. ch. vii. pp. 130-135 (Bohn's Library Edition).

Brytewealda of all these isles. Æthelstan's reign is also noteworthy for his intercourse with foreign powers, and for the marriage alliances made by him with the Frankish, Norman, and Flemish Courts.<sup>1</sup>

But the third feature of his time and rule, and one especially deserving of notice, is the extension of the shire system, and the extension of the "frith-gild" system. One of these marks of his wisdom has lasted down to our own days; the other exercised for a long period a remarkable influence on the progress of England in the path of orderly settlement.

In old times the word shire simply meant what its name describes—a division. It was a division of a territory, as *e.g.* the bishop's shire, the kirkshire or parish. Later on it came to mean a territorial division for administrative purposes. The representative life of folk moot and of hundred moot being preserved in the shire.

Looking at it historically, it is a West Saxon institution, traceable to the earliest ages of West Saxon history.

In Ine's day, and down to Ecberght's time it would appear that each shire drew its name from the "tun" of each locality, the gathering-place of the shirefolk for the moots; but from Ecgerht's day the character of this primitive division was changed, for then the whole of the West Saxon kingdom was arranged in separate "pagi," each with an ealdorman at its head.

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<sup>1</sup> See in addition to Lappenberg, vol. ii. p. 139, Green's "Conquest of England," ch. v. pp. 218, 219.

Thenceforward the district ceases to draw its name from the central "tun," and the new institution assumed a larger and more important position in the territorial department of the kingdom.

So that in Æthelstan's reign<sup>1</sup> the shire had spread over the whole country, and become the recognised political division thereof.

Whilst this new organization of the country was progressing, another element of a new municipal life was being fostered within English boroughs, and accepted by Æthelstan as a constituent part of borough life in the doom of London.

This new element was the frith gild, and of that I shall now speak.

It was easy to make laws; it was often, especially in those times, far from easy to enforce them. The power of the crown was not always sufficient to carry out all its orders; for where the king's personal action could not be exerted, his will might be and often was disregarded, especially in times when an adequate police or judicial machinery was wanting.

The object of the frith gilds was to supply that machinery, and the reason why such an institution was needed was because the old power of defending social life and justice, which the mutual responsibility of the kinsfolk had afforded, had become weakened and eventually destroyed after the dissolution of the family bond on which it rested; the altered conditions of social life, owing to the Danish incursions, and the growth of a

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<sup>1</sup> The shire is referred to by him as an old and settled division.

feudal temper among the nobles, rendering, as I have already shown, the existence of the freeman most perilous.

Therefore the old method of protection by means of "the brotherhood of the kinsfolk," was replaced by a new institution, that of a voluntary association of neighbours for the same purposes of order and self-defence.

Hence we find that the tendency to unite in frith gilds or peace clubs became general throughout Europe during the fifth, sixth, and tenth centuries; roughly met and repressed on the Continent, but accepted in England, especially after the Danish wars, as the base of social order.

By Alfred the common responsibility of the members of the frith gild, side by side with that of the kinsfolk, was recognised; and by Æthelstan, as will be shown presently, it was solemnly ordained and confirmed.

Its distinguishing marks were an oath of allegiance, a gild feast held once a month in the common hall, mutual responsibility,—“all sharing the same lot; if any misdo, let all bear it”—mutual assistance in case of violence or wrong.

Mr. Kemble has traced the history of this ancient institution with his usual care and research.<sup>1</sup> It grew, as he tells us, out of the two distinct principles which marked the early legislation of the Teutonic people, viz., the responsibility of the family, and the existence of small numbers of men forming something like corporate bodies in neighbouring proximity; thus making up the public units in the state itself.

The primitive settlement of our own Teutonic immi-

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<sup>1</sup> Kemble's "Anglo-Saxons," vol. i. ch. x. pp. 237-240.

grants is exhibited in the form of inhabitants of the Mark, classed in tens and hundreds (tithings and hundreds), composed of a corresponding number of members headed by its officers, a tithing man for each tithing, and a hundred man for each hundred; the whole forming one body of one hundred and eleven men—that is, one hundred ordinary members, ten “tithing men,” or, to use the equivalent Frankish term, “decani,” and one “hundred man,” or “centenarius.”

Although the Anglo-Saxon law does not specify its divisions by these names, “tithing man” and “hundred man,” till a somewhat late period, yet the probability is that it implies them under the term *gegyldan*, “fellows, brothers of the gild.”

In Alfred’s laws express reference is made to these *gegyldan* (*Leg. Ælf.*, § 27) as well known and well established associations, not accidentally existing, but taken to be old and approved bodies, to which each *man* of the community was attached as a matter of course. Hence the assumption that is fairly deducible is this, that in Alfred’s day the time-honoured and time-hallowed rule was that every individual was taken to be a member of some gild or association, bound by all the regulations of the body, and sharing with others in paying, that is in contributing, to a common purse for festive purposes, for mutual guarantee, and for club funds; for legal costs, for reciprocal aid and defence, and even, it may be, for funeral celebrations and for charitable objects. Whether the *gegyldan* was also jointly responsible for taxes or for the expense of the *fyrð* (or military musterings) is a matter of doubt.

With good reason does Mr. Pearson say of this gild system, that it is an institution deserving of large praise. Loyalty to the State, protection of liberty, promotion of honour and courage, all flow from and are inherent in it. The moral training resulting from it stands as high as the material gains it afforded to the State itself, and so I think we may agree with him in this eulogium: "The Saxon gilds are unmatched in the history of their times as evidences of self-reliance, of mutual self-restraint, and of orderly love of law among a young people."<sup>1</sup>

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<sup>1</sup> Pearson's "History of England," vol. i. ch. xvii. pp. 275, 276. See also Lappenberg, "The Anglo-Saxon Kings" (Bohn's Library Edition) vol. ii. ch. xx. pp. 406-410, and pp. 433-435.

## LECTURE XV.

### *THE ANGLO-SAXON LAWS.*

The Laws of King Æthelstan—The Decrees of the Council of Greatanlea—The Doms of the City of Exeter—Forfang—The Doms of the City of London—The Reign of Eadmund (the First)—His Legislature in Respect of the Right of Feud—Eadmund's Laws—The Records of Culinton—The Oath of Fidelity and the Preservation of the Peace—The Reign of Edgar—His Character as Described by the Monkish Writers—His Favourable Inclinations towards the Church—Edgar's Laws—The Hundredal Divisions and the Ordinances thereto Relating—Edgar's General Ordinances.

I COMMENCE this lecture with a few excerpts from the laws of King Æthelstan, in order to exhibit the style and manner of the legal rules provided by him for the welfare of his subjects; but before I do that, I must shortly describe the whole amount of legislation of this reign. From this it will be seen that the energy of the king's mind was as conspicuous in the line of law making as it was in other directions.

The laws of King Æthelstan will be found set out at full length (and this remark applies to the laws of all the other Anglo-Saxon kings) in Thorpe's collection of the laws and institutes of Anglo-Saxon England. They are arranged under five heads.

The first comprises the laws that were framed at the Council of Greatanlea (probably, says Thorpe, Grately,

near Andover); the second, those entitled *Decretum Cantianum*, or the Kentish ordinances; the third, those called *Decretum Sapientum Angliæ*, the ordinances of the wise men of England; the fourth relates to *Forfang*, *i.e.*, illegal seizing, to which is added the doom concerning hot iron and water; the fifth is entitled *Judicia Civitatis Londiniæ*, or dooms of the City of London.

The laws of the Council of Greatanlea contain, in addition to Chapter I., twenty-six ordinances. In Chapter I. the rendering of tithes, both of live stock and of the year's fruits, is solemnly enjoined.

The twenty-six ordinances that follow are on the following subjects:—(1) of thieves, (2) of lordless men, (3) of denial of right, (4) of plottings against a lord, for which the penalty was death, (5) of church breach, (6) of witchcrafts and of incendiaries, (7) of the single ordeal, (8) of landless men, (9) of attacking cattle, (10) of exchange and of wrongful testimony, (11) of him who would pay off a criminal charge from one slain, (12) against buying out of port, (13) of repairing “burhs” (fortified places or strongholds), (14) of moneyers (or licensed coiners), (15) of shieldwrights and of “having to plough,” (16) of well-horsed men, (17) of those who take “meed-money” of a thief (*i.e.*, bribe money, from “med-sceat”) and suppress another's right, (18) against selling horses beyond seas, (19) of a “theowman” who is guilty at the ordeal, (20) of him who fails to attend the “gemot,” (21) of him who compounds for an ordeal,<sup>1</sup> (22) of him who receives another man's man, (23) of him who

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<sup>1</sup> On the ordeal, see Appendix, Note Q.

gives "wed" (*i.e.* pledges) for an ordeal, (24) of him who buys property, (25 and 26) of perjurers.

In the dooms or decrees of the wise men of England, passed at the witenagemot at Exeter, there are seven ordinances.

Besides these there are seven other laws, propounded probably, says Thorpe, at Thundresfield, near Horley. It was here that the law about tracing into another land and the rules about forfang were enacted.

As to the matter of forfang, or illegal rescue, it was declared thus: "Let forfang everywhere, be it in one shire, be it in more, be fifteen pence, and for every one of small degree always for each shilling a penny. Concerning 'forfang,' the witan have held like judgment over all England, *i.e.*, for a man fifteen pence, and for a horse as much, whether in one shire or in more."<sup>1</sup>

Of the dooms of the City of London there are twelve chapters. I now give some excerpts from these laws, confining myself to those selected by Bishop Stubbs<sup>2</sup> as being sufficient for the general purpose I have in view.

(2) Of lordless men (at the Council of Greatanlea, A.D. *circa* 930). And we have ordained respecting those lordless men, of whom no law can be got, that the kindred be commanded that they domicile him to "folkright," and find him a lord in the "folkmete," and if they cannot or will not produce him at the term, then he be thenceforth a "flyma" (a runaway), and let him slay him for a thief

<sup>1</sup> Forfang (from the Saxon words "fore" and "fang," a previous taking) had two special significations: (1) a seizing or rescuing stolen cattle, (2) the reward for such rescue. (See Fleta, lib. i. cap. 47 § 15.)

<sup>2</sup> "Documents Illustrative of English History," pp. 64-66.

who can come at him, and whoever after that shall harbour him, let him pay for him according to his "wer" (his pecuniary estimation), or by it clear himself.

(12) And we have ordained that no man buy any property out of port over xx. pence. But let him buy there within on the witness of the "port reeve," or of another unlying man; or further, on the witness of the "reeves" at the "folkmete."

(20) If any one (when summoned) fail to attend the "gemot" thrice, let him pay the king's "oferhrynes" (the penalty for contempt of jurisdiction), and let it be announced seven days before the "gemot" is to be. But if he will not do right, nor pay the "oferhrynes," then let all the chief men belonging to the "burh" ride to him and take all that he has and put him in "borh" (surety). But if any one will not ride with his fellows, let him pay the king's "oferhrynes."

The laws or dooms of the Council of Kent are in Latin, and the excerpts cited by Dr. Stubbs are given in that language. I translate them.

Cap. 4. Let no one receive the man of another without the license of him whom (the man) has previously followed (folgavit), neither within the boundary of the mark nor without its bounds. And let not a lord refuse to a free-man his jurisdiction as a hlaforð, or lord (hlaforðsocna).

Cap. 7. That every man hold his own men in his own suretyship against all theft. Then if there be any one having so many men as not to have sufficient means to keep them all under control, let him place in each one of his "vills" one "reeve" (præpositum), who may be trustworthy towards himself and who may give

trust for his men. And if the "reeve" dare not give trust for any of his men, let him find twelve sureties (plegios) of his own kin, who may stand to him in pledge. And if the lord or the "reeve" or any man infringe this, or depart thence, let him be amenable to all that was ordained at Greatley, unless some other doom is more satisfactory to the king.

*The Dooms of the Witan of Exeter.*

Cap. I. And let there be named in every "reeve's manung" (in every reeve's district) as many men as are known to be unlying, that they may be for witness in every suit (that is, let a kind of jury list of "good men and true" be kept in each district). And be the oaths of these unlying men according to the worth of the property without election.

*The Dooms of the City of London.*

This is the ordinance which the bishops and reeves belonging to London have ordained, and with "weds" (pledges) confirmed among our "frith-gegildas" (our frith gilds) as well "eorlish" as "ceorlish," in addition to the dooms which were fixed at Greatanlea and at Exeter and at Thunresfeld.

Cap. III. That we count always ten men together, and the chief should direct the nine in each of those duties which we have all ordained and (count) afterwards their "hyndens" (i.e., their hundreds, so says Kemble, vol. i. p. 244), and one "hynden man" (i.e., one hundred man or centenarius), who shall admonish the x. for our common benefit, and let these xi. hold the money of the

“hynden” (*i.e.* of the hundred), and decide what they shall disburse when aught is to pay, and what they shall receive if money should arise to us at our common suit, and let them also know that every contribution be forthcoming which we have all ordained for our common benefit after the rate of xxx. pence, or one ox; so that all be fulfilled which we have ordained in our ordinances and which stands in our agreement.

Cap. VIII. (1) That we gather to us once in every month, if we can and have leisure, the “hynden men” and those who direct the tithings (*i.e.*, the tenth man, or decanus) as well with “bytte-fylling,”<sup>1</sup> as else it may concern us, and know what of our agreement has been executed, and let these xii. men have their refection together, and feed themselves according as they may deem themselves worthy, and deal the remainder of the meal for the love of God. (2) And if it then should happen that any kin be so strong and so great within land or without land, whether “xii. hynde” or twy hynde,<sup>2</sup> that they refuse us our right, and stand up in defence of a thief; that we all of us ride thereto with the reeve within whose “manung” (district) it may be.

Eadmund (the first) is the next king whose laws present themselves for notice. Young as he was when he came to the throne, he had already given proofs of his valour

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<sup>1</sup> The filling of butts, referring probably to the festivities which were usual at the councils or local assemblies of the Anglo-Saxons.

<sup>2</sup> Twelve-hynde man was one whose wer-gild (money value) was twelve hundred shillings; twy-hynde man one whose wer-gild was two hundred shillings. “Hynden” and hundred, says Mr. Kemble (vol. i. p. 245), are in fact and were at first identical.

at the great battle of Brunanburh (fought, in Æthelstan's reign, against the Danes). He, too, gave the Danes a taste of his valour, and compelled them to submit to his arms. Cumbria also was reduced to subjection by him.

But a reign that promised to be an eventful one for the Saxon domination was brought to a close by the dagger of an assassin only six years after his accession.

Lappenberg dismisses his legal enactments with a notice too short and too unjust,<sup>1</sup> when he says that these enactments, ecclesiastical and secular, present nothing whereby greatly to interest the general reader.

He passes over what Eadmund effected in reforming an evil that had pressed on the country for many years. I mean the right of feud.

Some time back I dwelt upon this ancient custom at a little length, and I showed how injurious it was to the proper settlement of the social life of England, morally as well as materially.

Two sentiments had been silently but gradually growing up, which in Eadmund's time had become so far developed as to present a strong and ameliorating opposition to the rights of private vengeance which this notion of feud sanctioned.

These sentiments were those which the higher moral aspirations that Christianity stirred into life had introduced, and those which the growing sense of a common national life inspired.

The idea of the right of feud which had rested on the

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<sup>1</sup> Lappenberg, "Anglo-Saxon Kings," vol. ii. ch. vii. p. 151 (Bohn's Library Edition, 1884).

family bond had been fostered by the notion that the kinsfolk were bound together by ties of mutual responsibility for vengeance and aid in self-defence.

But the continuing growth of society, and its more complex divisions, worked a change in the aspect of this theory, substituting for the earlier ties of blood the later idea of the duty of the social group to exact redress for wrongs inflicted on the community; whilst the teachings of Christianity, insisting upon the importance of moral duties, helped to weaken the bonds of kinship.

Eadmund, who "shared in the horror of the unrighteous and manifold fightings," which was felt in his day,<sup>1</sup> attacked the custom of the feud by striving to lay on the man-slayer himself the whole burden of his deed, and thus, by freeing the kinsfolk from the obligation of bearing the feud, and by protecting them from the vengeance of the slain man's kin, struck a heavy blow at the old notion of the kinship, with its responsibilities, and introduced a reform of the most beneficial kind in the moral tone and sentiment of England.

A successful attempt to mould the habits and manners of a people into a more righteous and more gentle shape than of old, marked such an era of improvement in the social life of England that not to record it, and to assign the honour to him who not only thought of it but worked it out with vigour, would be neither just nor in accordance with the object I have in view.

It is to Eadmund's honour that he strove to reform and

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<sup>1</sup> Eadmund's secular laws, § 1, Thorpe, i. 246; and Kemble's "Anglo-Saxons," vol. i. ch. x. p. 274.

improve the social life of his countrymen, as well as to purify their old customs by the infusion of moral notions such as their forefathers had never thought of.

Of Eadmund's laws six are ecclesiastical—framed at his great witan of London, at which Archbishop Oda and Archbishop Wulfstan were present—and seven secular. Seven more were enacted at the Council of Culinton, about A.D. 943.

Of the seven secular laws, six are directed against acts of violence and robbery, and one, the first of the whole collection, is that to which I have above alluded, respecting *fæhde* or feuds. It deserves to be recorded at length, and runs thus:—

“Eadmund the king makes known to all the people, old and young, that are in his dominion, what I have deliberated with the council of my witan, both ordained and laic. First, how I might best promote Christianity. There seemed to us first most needful that we should most firmly preserve peace and harmony among ourselves throughout all my dominion. Both I and all of us hold in horror the unrighteous and manifold fightings that exist among ourselves; we have therefore decreed—

“If any one slay another, let him bear the feud himself, unless, by the assistance of his friends, and within twelve months, he make amends with the full ‘wer,’ be he born as he may. But if his kindred forsake him, and will not pay for him, it is my will that all the kindred be ‘unfah’ (out of feud), except the actual perpetrator; provided that they do not give him either food or protection. But if afterwards any of the kindred harbour him, he shall be liable in all that he possesses to the king and bear the feud

with the kindred, because they had previously forsaken him. But if any of the other kindred take vengeance upon any man save the actual perpetrator, let him be foe to the king and all his friends, and forfeit all that he has."

The records of the "Concilium Culintonense," or witenagemot of Culinton, are in the Latin language. The laws there passed are seven in number.

The first relates to the oath of fidelity to King Eadmund; five others are enactments concerning theft and other offences; and one, comprising nine separate rules, embraces the subject of betrothals of women.

I translate only two extracts from this set of laws—relating to the taking the oath of fidelity and the preservation of the peace in the various districts of the country.

A.D. *circ.* 943. "This is the injunction which King Eadmund and his bishops, together with his wise men (or witan), have enacted at Culinton concerning the keeping the peace and the oath-taking."

§ 1. *Concerning the taking the oath of fidelity to the King Eadmund.*

Imprimis, that (every man) do swear in the name of God the Lord, who is all holiness, fidelity to Eadmund the King, as (every) man ought to be faithful to his own lord, renouncing all strife and sedition, in public or in private, in loving what the king shall love, in rejecting what he shall reject, and first this oath shall be given that no one shall conceal (the acts of) his brother or his kinsman any more than he would (those of) a stranger.

§ 7. *That every (lord) make his own men trustworthy, and concerning persons of ill-repute and persons who pay no heed to these enactments,*

And let every man (*i.e.*, lord) make his own men trustworthy, as well as all who are subject to his peace and in his demesne. And let persons of ill-repute, and all who are well-known as being accused of misdoing, be held under pledges. And let the prefect (reeve), or thegn, or "comes" (gesith), or villein ("ceorl") who refuses to do this, or neglects to do it, make reparation with cxx. shillings, and let him be subject to all the above-stated provisions.

Of Edgar's reign (which lasted from A.D. 959 to 975), as Mr. Green notes, there is little recorded of any value. The chronicles wholly break down, and the materials that they afford are meagre in the extreme. Bad as was his moral character, and evil as was his life, there was something in him that commended him to his subjects. The chronicle speaks of him, strangely enough, as a God-fearing and pious man, and his reign was long looked back upon with affection. The only vices that there are charged against him are his too great inclination for foreign manners and his love for heathen customs. Possibly the monkish writers of his day, remembering his gifts to the Church,<sup>1</sup> and his steady devotion to the covenants of the wise, though somewhat crafty, Dunstan, drew the picture of his rule in colours more favourable than his own acts deserved. In one respect he did show wisdom, and that was (probably under the advice of Dunstan) in recognising the necessity of standing well with the great nobles of his

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<sup>1</sup> He founded and endowed with large grants the abbey and minster of Peterborough, formerly known as Medhampstede, and largely helped the Abbot Ethelwold in the making of the minster at Ely. (See "Anglo-Saxon Chronicle," Bohn's edition, pp. 381, 382)

kingdom, and in abstaining from any such useless struggle as wrecked England under Æthelred.

As a man he was as bad as man can be, but as a king he possessed virtues that were of service in the cause of social order and constitutional improvements. "He journeyed," says Lappenberg, "through his states in winter and summer, examining into the administration of his ealdormen, and punishing their delinquencies with a severity that showed the malefactors that their evil deeds would not be passed over lightly; and so, as the chronicle runs, the people prayed 'that God would grant that the king's good deeds would be more availing than his misdeeds for his soul's protection on the longsome course.'"<sup>1</sup>

His favourable inclinations to the Church were shown not only by the endowments he made, but by the ecclesiastical enactments he sanctioned. The payment of tithes, of church shot, and of hearth money on St. Peter's day was insisted on with a rigour almost incredible; and the penitential of Theodore, or rather of his copier, Ecgberht, was republished with excessive penalties for non-observance of the rules therein contained.

In his secular laws, Edgar insists vigorously on the maintenance of the duties of the judge, on the holding of the burh-mote twice, and of the shire-mote thrice a year. He carefully defines the principles of the frithborh, or guarantee for peace; he gives regulations for the confirmation of sales and purchases by legal witnesses; and he provides for a uniform monetary standard, and for

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<sup>1</sup> "Anglo-Saxon Chronicle" (Bohn's edition), p. 381, A.D. 953.

the general observance of the Winchester weights and measures.

By these enactments, as well as by his own careful personal attention to the proper administration of his laws, the commercial interests of the country were largely benefited, and the preservation of social order maintained.

But it is in respect of the organization of the country in its hundreds that Edgar's reign is noteworthy ; and of this part of his work I shall now speak before I give such of the excerpts from his laws as appear to me most suitable for illustrating the character of Edgar as a legislator.<sup>1</sup>

According to the tradition preserved by William of Malmesbury, the institution of the shire, the hundred, and the tithing is attributable to Alfred, and for this Bishop Stubbs assigns an apparent ground.<sup>2</sup>

The West Saxon shires appear in history under their present names, and with a shire organization much earlier than those of Mercia and Northumberland, while Kent, Essex, and East Anglia had throughout an organization derived from their old status as kingdoms. It is in Wessex, further, that the hundredal division is supplemented by that of the tithing.

It may then be argued that the whole hundredal system radiated from the West Saxon kingdom, and that the variations mark the gradual extension of that power as it

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<sup>1</sup> Lappenberg, vol. ii, ch. ix.

<sup>2</sup> "Constitutional History," vol. i. p. 112, cited by Mr. Green; "Conquest of England," ch. iv. p. 141. See Mr. Kemble's strong criticism of and opposition to this proposition, "History of the Anglo-Saxons," vol. i. p. 247.

won its way to supremacy under Edgar or Æthelwulf, or recovered territory from the Danes under Alfred, Eadward, Æthelstan, Eadmund, Edred, and Edgar. If this be allowed, the claim of Alfred as founder, not of the hundred land, but of the hundredal division, says Bishop Stubbs, may rest on something firmer than legend.

Edgar deserves a special notice in connection with this matter, because he was the first Saxon king who appreciated at its proper estimate the full value of this division, and the first king who gave it a name and a place in the local divisions of the country.

Now, as this arrangement of England into hundreds played an important part in the history of the settlement of England, affecting not only the localities so divided, but the due administration of the law, and as the laws of Edgar give us a good idea of the method of holding them, and what came under their cognizance, I will set out first his "ordinance how the hundred is to be held," and then his general ordinances on other matters; for these also afford a fair insight into the social order and local arrangements of the country.

EDGAR. A.D. 959-975.

*This is the ordinance how the hundred shall be held:—*

(1) First, that they meet always within four weeks, and that every man do justice to another.

(2) That a thief shall be pursued. . . . If there be present need, let it be made known to the hundred-man, and let him make it known to the tithing-man (the head of the tithing, the tithing being the union of ten freemen for mutual security), and let all go forth

to where God may direct them to go. Let them do justice on the thief, as it was formerly the enactment of Eadmund; and let the "ceapgild" (the market price) be paid to him who owns the cattle, and the rest be divided into two, half to the hundred, half to the lord, excepting men, and let the lord take possession of the men.

(3) And the man who neglects this, and denies the doom of the hundred, and the same be afterwards proved against him, let him pay to the hundred xxx. pence, and for the second time lx. pence, half to the hundred and half to the lord. If he do so a third time, let him pay half a pound. For the fourth time, let him forfeit all that he owns, and be an outlaw, unless the king allow him to remain in the country.

(4) And we have ordained concerning unknown cattle, that no one should possess it without the testimonies of the men of the hundred, or of the tithing-man, and he be a well trusty man, and unless we have either of these, let no vouching to warranty (team) be allowed him.

(5) We have also ordained if the hundred pursue a track into another hundred, that notice be given to the hundred-man, and that he then go with them. If he neglects this, let him pay xxx. shillings to the king.

(6) If any one flinch from justice, and escape, let him who held him, in answer for the offence, pay the "angylde" (the legal value), and if any one accuse him of having sent him away, let him clear himself, as is established in the country.

(7) In the hundred, as in any other "gemot" (meeting), we ordain that folk-right be pronounced in every suit, and that a term be fixed when it shall be fulfilled;

and he who shall break that term, unless it be by the lord's decree, let him make "bot" (compensation) with xxx. shillings, and on the day fixed fulfil that which he ought to have done before.

(8) An ox's bell, and a dog's collar, and a blast-horn, either of these three shall be worth a shilling, and each is reckoned an informer.<sup>1</sup>

(9) Let the iron that is for the ordeal weigh iii. pounds, and for the single one pound.<sup>2</sup>

Edgar's general ordinances are as follows:—

This is the ordinance that King Edgar, with the counsel of his witan, ordained in praise of God and in honour to himself, and for the behoof of all his people.

(1) These, then, are first: That God's churches are entitled to every right, and that every tithe be rendered to the old minster to which the district belongs, and that it be then so paid both from a thegn's "inland" (*i.e.*, his own demesne), and from "geneat-land" (*i.e.*, land cultivated by geneats, or persons holding by service), so as the plough traverses it (arable land).

### *Secular Ordinance.*

Cap. 1. Now this is the secular ordinance which I will that it be held. This, then, is first what I will: That every man be worthy of folk right, as well poor as rich, and that righteous dooms be judged to him; and let there be such remission in the "bot" as may be becoming before God and tolerable before the world.

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<sup>1</sup> See as to this, Note P in Appendix.

<sup>2</sup> See as to the ordeal, Appendix, Note Q.

Cap. 2. And let no one apply to the king in any suit unless he at home may not be worthy of law or cannot obtain law. If the law be too heavy, let him seek a mitigation of it from the king, and for any "bot-worthy" crime, let no man forfeit more than his "wer" (the pecuniary estimation of a man).

Cap. 5. And let the hundred gemot be attended as it was before fixed, and thrice in the year let a burh-gemot (meeting of the burghers in council), be held, and twice a shire-gemot, and let there be present the bishop of the shire and the ealdorman, and there both expound as well the law of God as the secular law.

Cap. 6. And let every man so order that he have a "borh" (a surety), and let the "borh" then bring and hold him to every justice (*i.e.*, to answer all suits and prosecutions), and if any then do wrong and run away, let the "borh" bear that which he ought to bear; but if it be a thief, and if he can get hold of him within twelve months, let him deliver him up to justice, and let be rendered to him what he before had paid.

Cap. 8. And let one money pass throughout the king's dominion; and that no man refuse, and let one measure and one weight pass, such as is observed at London and at Winchester.

### *Supplement.*

Cap. 3. This, then, is what I will: That every man be under "borh," both within the "burhs" (inclosed and fortified places), and without the "burhs," and let witness be appointed to every "burh" and to every hundred.

Cap. 4. To every "burh" let there be chosen xxxiii.

as witness (*i.e.* let a jury list of thirty-three be made out).

Cap. 5. To small "burhs" and in every hundred xii., unless ye desire more.

Cap. 6. And let every man with their witness buy and sell every of the chattels that he may buy and sell, either in a "burh" or in a "wapentake," and let every of them, when he is first chosen as witness, give the oath that he never, neither for money nor for love, nor for fear, will deny any of those things of which he was witness, nor declare any other thing in witness save that alone which he saw or heard, and of such sworn men let there be at every bargain two or three as witness.

## LECTURE XVI.

### *THE ANGLO-SAXON LAWS.*

The Reign of Ethelred—The Events of his Reign—The Normans in England—The Diminution of the Influence of the Ealdorman Class—The Improvements in Legislation and Government through Edric's Counsels—Ethelred's Laws—The Ordinance of Woodstock—"Borhs": A "Frith-breach"—Man-Selling and Severity of Punishment Denounced—The Reign of Knut (or Canute)—His Character—Influence of his Reign on the Social and Political Life of England—The Feudal Tendencies of his Rule and Legislation—The Normans and Duke Robert—Knut's Laws—Godwine—Laws of Edward the Confessor—The Ordeal—The Shire Divisions—Frithborgs—Sache, Soche, Tol, Theam, and Ingfangthef—Close of Anglo-Saxon History.

OF Ethelred's reign I need not say much. It is not a period of time that presents any pleasant features. Nor was the character and disposition of the king such as would raise the sinking fortunes of the dynasty of Alfred.<sup>1</sup>

At times sunk in pleasure, he abandoned himself to a vicious course of ease. At times exhibiting activity, he strove with but little success to stem the torrent of the Danish attacks. Impolitic in his war with Nor-

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<sup>1</sup> "Imbellis," writes the monkish scribe of him, "quia imbecillis monachum potius quam militem actione prætendebat."—*Osborni Vita*.

mandy, he was only able to stave off the Norman invaders by a treaty resulting in a marriage with the sister of the Norman Duke, thereby preparing the way for the introduction of Norman settlers in the kingdom. Savage in his attempt at revenging himself on his Danish opponents by the massacre of Saint Brice's Day, he brought upon himself a defeat at their hands which eventually ended in a separation of a part of England (Northumbria and Mercia) from the sovereignty of his son and successor, Edmund, leading to the ultimate triumph of Knut; and, careless of the best interests of his country, he allowed robbery and murder to go unchecked and unpunished.

Three events, however, mark his reign with some significance. The first was that which I have already noticed—the introduction of the Normans to England through his marriage with Emma, whose second marriage on his death to Knut connected that king with the old history of the country. The second event was the steadily diminishing number of the great ealdormen, and their influence at Court. Consequent on this was the rise to power of a new race of men, who, though not of noble blood, yet showed so remarkable an aptitude for administrative qualities, that even under the Norman kings they were called to the Council board.

The third event, and this was owing to one of these low-born ceorls, Edric, to whom Ethelred had given a daughter in marriage, was that regulations in respect of political and military organization were decreed, a promise of just laws and mild government was given, and improvements in the revenue (among them the

ship geld), afterwards recognised by Knut as worthy of adoption and extension, were framed into law.

From Ethelred's laws I give the following excerpts<sup>1</sup> :—

ETHELRED I. A.D. 978–1016.

This is the ordinance which King Ethelred and his witan ordained as frith-bot (as security for the maintenance of peace) for the whole nation, at Woodstock, in the land of the Mercians, according to the law of the English.

I. Cap. 1. Of Borhs. That is, that every freeman have a true "borh" (a surety), that the "borh" may present him to every justice, if he should be accused. But if he be "tythbysig" (of bad repute), let him go to the threefold ordeal. If his lord say that he has failed neither in oath nor ordeal since the "gemot" was at Bromdun, let the lord take with him two true "thegns" within the hundred, and swear that never had oath failed him, nor had he paid "theof-gyld" (money paid in compensation for robbery), unless he have the reeve who is competent to do that. If then the oath succeed, let the man then who is there accused choose which ever he will, either single ordeal,<sup>2</sup> or a pound-worth oath, within the three hundreds, for above thirty pence. If they dare not take the oath, let him go to the triple ordeal. . . . And let every lord have his household in his own "borh" (that is, let the lord himself be bail for his own household).

<sup>1</sup> See "Documents Illustrative of English History," p. 71, by W. Stubbs, M.A.

<sup>2</sup> See Appendix, Note Q.

II. Cap. 6. If the frith-breach (the payment to atone for breach of peace) be committed within a "burh" (a fortified place), let the inhabitants of the "burh" themselves go and get the murderers, living or dead, or their nearest kindred, head for head. If they will not, let the ealdorman go; if he will not, let the king go; if he will not, let the ealdorman lie in "unfrith" (that is, in the condition of being out of the king's peace).

III. Cap. 3. And that a "gemot" be held in every "wapentake," and let the xii. senior "thegns" go out, and the "reeve" with them, and swear on the relic that is given them in hand, that they will accuse no innocent man, nor conceal any guilty one. . . .

V. Cap. 2. And the ordinance of our lord and of his witan is, that Christian men and uncondemned be not sold out of the country, especially into a heathen nation; and be it jealously guarded against that those souls perish not that Christ bought with His own life.

Cap. 3. And the ordinance of our lord and of his witan is, that Christian men for all too little be not condemned to death; but in general let mild punishments be decreed for the people's need, and let not, for a little, God's handiwork and His own purchase be destroyed, which He dearly bought.

Cap. 26. But let God's law be henceforth zealously loved, by word and deed, then will God soon be merciful to this nation; and let "frithes-bot" and "feos-bot" (sureties for the peace and against bad coining), everywhere in the country, and "burh-bot" (security for the repair of the local defences), on every side, and "bric-bot" (security for the repair of bridges), and the arma-

ments (*fyrðung*) also be diligently attended to, according to what is always prescribed when there is need.

Cap. 28. And if any one without leave return from the "*fyrð*" (from the call to arms), in which the king himself is, let it be at the peril of himself and all his estate; and he who else returns from the "*fyrð*," let him be liable in cxx. shillings.

Mr. Pearson has dealt with the character of Knut or Canute in hard terms. It is true he does point out some of the benefits conferred by this monarch upon Saxon England, but I think he hardly does justice to his later efforts to make himself a sovereign acceptable to the English people, and ever mindful of their good government.

In estimating his character, we must remember the times in which he lived, and the difficulties that beset him ere he succeeded to the half of the kingdom which on Edward's death he was able to weld into one solid and settled unity.

If, as Mr. Pearson says, he had the cunning of a fox, the passions of a child, and the vindictive memory of a savage, yet it must not be forgotten that under his sway England enjoyed a period of peace that she had not known since Alfred's reign; that commerce was enlarged; that the revenue was increased and provided without demur; that towns like Oxford, Chester, Bristol, Nottingham, York, and others, grew in strength and wealth; that the seaport towns were settled and improved; and that above all London attained to a vigorous prosperity larger than had been its lot under Knut's predecessors, and developed a form of municipal government which future ages long looked on with respect and admiration.

It is not my purpose, as I have said before, to dwell minutely upon the history of the times I am describing. I must refer to other authorities for their record should you wish to inform yourselves about them at the full extent they deserve. For full information on the events of this portion of our Anglo-Saxon country, reference may be made to Mr. Green's ninth chapter of the *Conquest of England*, and to Professor Freeman's "*History of the Norman Conquest*," vol. i. ch. vi. pp. 402-479 (3rd edition, revised 1877). The reader will be well repaid by the perusal of each of these works.

But of the influence of his reign upon the social and political life of England I have somewhat to say. And first and foremost the complete settlement of the country, and the happy fusion consequent thereon of Dane with Saxon, is a striking feature.

One result of this was peace and prosperity; another the stirring energy given to trade, especially in London consequent on the settlement of the Dane there; a third was the increase of material wealth, a necessary accompaniment of the rapid development of trade.

Next in importance was the king's complete identification of himself with the English people. An English king, not a foreign master, he pledged himself, and firmly kept his vow, to be true to the traditional constitution and usages of the realm.

As an instance of this I can cite his selection of a West Saxon thegn, although a man of unknown birth and obscure origin, to be the Earl of Wessex. Further, he re-enacted the laws of his predecessors, holding unchanged the form of government the control of the witan, the rule

of ealdormen and bishop, and the jurisdiction of the shire, the hundred-moot and the town-moot.

His wise selection of king's chaplains marks his political acumen; for the result of this was the presence of a body of selected and trusted administrators constantly at work, and at the disposal of the crown for fiscal, political, or judiciary purposes.

Nor should his fiscal reforms be forgotten. By the imposition of a land tax on all, he created a source of revenue at once valuable to the crown, and through its levy over every hide in the kingdom, a foundation of national strength and even of national feelings.

Of his temper and resolute disposition to rule rightly, the letter which he addressed to his English people from a foreign land, where he then was on pilgrimage, after ten years of rule, shows him in the character of an English king, and exhibits "the simple grandeur of his character, and the noble conception he had formed of kingship."<sup>1</sup>

"I have vowed to God," he writes, "to lead a right life in all things, to rule justly and piously my realm and subjects, and to administer just judgment to all. If heretofore I have done aught beyond what was just, through fearlessness or negligence of youth, I am ready with God's help to amend it utterly. No royal officer, either for fear of the king or for favour to any, is to consent to injustice. None is to do wrong to rich or poor, as they prize my friendship or their own welfare. I have no need that money be heaped on me by unjust demands.

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<sup>1</sup> Green's "Conquest of England," ch. ix. p. 433.

This letter I have sent before me, that all the people may rejoice in my well doing; for as you yourselves know, never have I spared, nor will I spare, to spend myself and my toil in what is needful and good for my people."

Of the material advantage derived from his wise rule, and from his careful provision for his country's welfare, the rapid development of English trade and commerce is a convincing proof.

This is visible as I have said in the creation of sea-ports, in the rise to wealth and importance of great towns such as Oxford, Nottingham, Chester, Bristol, York, and above all London, in which latter city such a stimulant was given to foreign trade, and to the firm establishment of municipal institutions, as was never lost.

That his civil government was that of a feudal sovereign is no doubt true, and in his enactments we come across purveyance, heriots, and the rights of succession and wardship, so that we seem to be reading the record of Norman times. This is scarcely to be wondered at when we remember what I have elsewhere adverted to, that the tendency of the times was steadily settling towards feudalism.

I do not want to go over the ground I have already traversed in former lectures about feudalism, and the reasons for its successful conquest of Europe. It is sufficient to say that some of the causes for that success, which, as I pointed out in that part of my lectures, were at work on the other side of the Channel, were not wanting in England. Among them especially was the need that the weak proprietor experienced of protection, and his consequent allegiance to a superior lord.

After all, as I have previously shown, with all its drawbacks, feudalism was not devoid of some grand qualities; and whilst on the one hand its aristocratic and exclusive principles commended it to the noble class, its value as an element of discipline and as evoking sentiments of loyalty equally commended it to the crown; moreover, its tendency to exalt the profession of arms was in those insecure and dangerous times not without advantage to the community itself.

Knut then ruled as a feudal sovereign. The treason of a vassal to his lord was made an offence punishable with the loss of life and property; but then, as a counterweight, heavy penalties were denounced against the lord who aided his followers to escape public justice.

The duel was now first legalized as a form of process for Danes settled in England.<sup>1</sup> The system of the "murdrum" was introduced. This was an extension of the frank pledge from property to life, and by it the district was made responsible for the "wer" of lives lost within it if it could not give up the offender. Its object was to provide security for the Danes on the departure of their army from England.

The first codification of stringent forest laws for estates everywhere, but especially for the royal private parks, is also due to Knut. Four thanes were appointed in every province to control the jurisdiction of "vert and venison."

A "witherlay's ret" (a court or guild-law) was framed for the king's standing army as well as for the body-

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<sup>1</sup> See as to the Duel and the Ordeal, Appendix, Note Q.

guard of his jarls.<sup>1</sup> A not unimportant measure at a time when the strictest discipline was necessary for the mercenaries who, to the number of from three to six thousand, were gathered under the king's banner, and who were composed of various nations.

But with all these feudal tendencies, the nation was not dissatisfied with Knut's government. Most of its old Saxon laws were preserved, the greater part of the ancient Anglo-Saxon customs obtained recognition. The country had peace and prosperity. The king's subjects saw the administration of the laws carefully provided for by enactment, and by royal supervision, and they saw the king himself "*more assueto regni fines peragrantem*," journeying through the English states from one shire to another, attended by his counsellors and scribes, earnest to secure order and respect for law everywhere and among all classes.

So now I have prepared the way for such excerpts of Knut's laws as will illustrate the legislative skill and administrative capacity of the king.

But before I give them I will conclude this notice of

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<sup>1</sup> These were originally the Danish soldiers (called by the English "*hus-carles*"). These *hus-carles* "were the germ of a standing army, and an anticipation of the system of fighting by mercenaries which was adopted by William the Conqueror and the Norman kings on account of the insufficiency of the feudal levies" (see "*Documents Illustrative of English History*," by W. Stubbs. Part xv. p. 146). This body of men, and that of the feudal levies, are entirely distinct from the ancient national militia, which was the armed English people, as old as the county court and the hundred court, and was in the reign of Henry the Second re-armed and re-created by the Assize of Arms, A D. 1181.

Knut and his times with a reference to the cloud that was gathering over England towards the end of his reign.

Among all the foes that England might have to meet, there were none whose skill and prowess rendered them more formidable than the Normans. There were none whom Knut watched with more jealousy, and none against whose attacks he strove to guard himself more assiduously.

Knut was at the height of his power when Robert (Robert the Devil as he was called), who had become Duke of Normandy in A.D. 1028, set sail with the Ætheling Alfred, one of the sons of Eadmund Ironside, for England, in order to restore the Saxon rule.

Fortune helped Knut, for a storm carried the Norman fleet down the Channel, and cast it wrecked on the coast of Jersey. The project of an invasion was given up, and Robert resolved to make the pilgrimage to the Holy Land. A few months after his departure he died at Nicæa (July, A.D. 1035), and so all danger from Norman attack was ended.

When Knut died four months afterwards (November, A.D. 1035), no Englishman believed there was cause of fear in the future, for Robert's successor was a boy, eight years of age, despised for his youth and scorned for his birth.

But—such is the irony of fate—thirty years later the “boy Duke,” the bastard son of Robert, carried the banners of Normandy to victory at Senlac, and Saxon England had to submit to the yoke of a Norman king, and to acknowledge the power and supremacy of William the Conqueror.

I now give the excerpts from Knut's laws:—

*Secular Doms.* A.D. 1016–1035.

Cap. 17. And let no one apply to the king unless he may not be entitled to any justice within his hundred; and let the “hundred-gemot” be applied to under penalty of the “wite” (fine or mullet), so as it is right to apply to it.

Cap. 18. And thrice a year let there be a “burh-gemot” (a meeting of burghers in council), and twice a “shire-gemot” (a meeting of the shire in council, of the comitatus), under penalty of the “wite” as is right, unless there be need oftener; and let there be present the bishop of the shire and the ealdorman, and there let both expound as well the law of God as the secular law.

Cap. 19. And let no man take any distress either in the shire or out of the shire, before he has twice demanded his right in the hundred. If at the third time he have no justice, then let him go at the fourth time to the “shire-gemot,” and let the shire appoint him a fourth term. If that then fail, let him take or leave either from hence or thence, that he may seize his own.

Cap. 20. And we will that every freeman be brought into a hundred and into a tithing. . . . And that every one be brought into a hundred and in “borh,” and let the “borh” hold and lead him to every plea:

Cap. 21. And we will that every man above xx. years make oath that he will neither be a thief, nor cognizant of theft.

Cap. 70. This then is the alleviation which it is my will to secure to all the people of that which they before this were too much oppressed with. That then is first;

that I command all my "reeves" that they justly provide on my own, and maintain me therewith; and that no man need give them anything as "feorm-fultum" (rent issuing out of the royal demesne or public land, and payable in kind) unless he himself be willing; and if any one after that demand a "wite," let him be liable in his "wer" (*i.e.*, to the extent of his own pecuniary value) to the king.

Cap. 71. And if any one depart this life intestate, be it through his neglect, be it through sudden death, then let not the lord draw more from his property than his lawful "heriot" (*i.e.*, the military equipment of a vassal); and according to his (that is the lord's) direction, let the property be distributed very justly to the wife and children and relations—to every one according to the degree that belongs to him.

Cap. 72. And let the "heriots" be as it is fitting to the degree. An eorl's such as thereto belongs; that is, eight horses, four saddled and four unsaddled, and four helmets and four coats of mail, and eight spears, and as many shields, and four swords and two hundred mancuses of gold. And after that, a "king's thegn's," of those who are nearest to him, four horses, two saddled and two unsaddled, and two swords and four spears, and as many shields, and a helmet and a coat of mail, and fifty mancuses of gold; and of the medial thegns,<sup>1</sup> a horse and his trappings, and his arms, or his "healsfang" (the sum which a man, sentenced to the pillory, would have to pay

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<sup>1</sup> From *mediatus, mesne*: thegns holding of another or superior thegn.

to save him therefrom) in Wessex; and in Mercia, two pounds; and in East Anglia, two pounds; and the heriot of a king's thegn among the Danes, who has his "soken" (or grant of franchise from the king), four pounds; and if he have further relation to the king, two horses, one saddled and the other unsaddled, and one sword and two spears and two shields, and fifty mancuses of gold; and he who is of less means, two pounds.

Cap. 81. And I will that every man be entitled to his hunting in wood and in field on his own possession; and that every one forego my hunting, take notice where I will have it untrespassed on, under penalty of the full "wite."

Cap. 83. And I will that every man be entitled to "grith" (immunity from molestation) to the "gemot" and from the "gemot," except he be a notorious thief.

With the death of Knut, the old order of things was coming to an end. Saxon and Dane were to disappear, and a new power, a foreign people, and a new set of ideas were to be introduced into England and grafted on to the old Saxon stock.

For a little while the genius of Godwine, Earl of Wessex, was able to retain a show of authority for the sons of Knut, Harthacnute and Harold Harefoot, but the Norman influence to which, early in his life, Edward the Confessor submitted, was too strong for Godwine to fight against, and when, on the death of Harold, Edward became King, Saxon though he was by birth, his Norman education and his Norman sympathies prepared the way for the eventual settlement of England by Duke William.

Yet Godwine's term of office must not be passed over

without notice in this review of the advancement of social and political life in England, for much of Knut's success in the administration of the English kingdom was due to Godwine's ability, and to the aid the king received from Godwine in working out his plans for the good government of the land.

Certainly Godwine is a remarkable instance of the proper influence of a vigorous intellect and well-trained judgment upon the destinies of a country.

English by blood, though of obscure origin, he had from the outset of Knut's reign recommended himself, not without fair and just reason, to that monarch's favour. His marriage with Gytha, the sister of the Jarl Ulf, Knut's brother-in-law, brought him still nearer to the king's notice; and so, from one honour to another, by ability at the council board, by ready speech, and by pleasant temper, at last he attained to the high rank of Chief Counsellor, Head Thegn, or, to give him the title which Knut, for the first time, created in his favour, "*Secundarius Regis*," an office which continued to the close of the Angevin dynasty.

I will not pursue the history of Godwine's life further. It is enough to say that to Godwine was largely owing the full development of the administrative machinery, the military organization, the judicial process of the country.<sup>1</sup>

All these survived the days of Knut and Godwine, and lasted till the time of the Norman Conquest. Thus

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<sup>1</sup> See as to Godwine, Freeman's "*History of the Norman Conquest*," vol. i. ch. vi. pp. 422-426, 493-501, and Notes ZZ, EEE and VVV (3rd edition, revised 1877).

the Conqueror and his successors found a system at work on which their efforts were bestowed in the way of extension and improvement. And what that system was the following excerpts from the laws of Edward the Confessor will make clear. I shall translate them from the Latin tongue, in which they were edited by Glanvil in the century following that of their recordation by the wise men of the shires, under William the Conqueror. They are worthy of perusal for two reasons: 1. Because in the *Intimatio* of William, published soon after his election to the throne of England, he declares that the law of King Edward is to be upheld and observed throughout the realm. 2. Because the Saxon population in country and town was guaranteed in the possession of their old customs and special institutions.

These are the excerpts,<sup>1</sup> and thus they run:—

*Laws of Edward the Confessor.* A.D. 1043–1066.

Ch. ix. (*Concerning those who appeal to the ordeal of water or of hot iron.*)<sup>2</sup> At the ordeal let the bishop's official be present, together with his clerks, as also the king's justiciary with the lawful men of his province, to see and hear that all things be fittingly performed; and let those whom God shall save through His mercy and by the justice of the court, be quit and go free; and as to those whom their own wickedness and lawlessness have condemned, let the king's justiciary do justice on them; but let those barons who have courts of their own over

<sup>1</sup> They are taken from "Documents Illustrative of English History," by W. Stubbs, at page 74, where they appear in their Latin form.

<sup>2</sup> On the Ordeal, see Appendix, Note Q.

their own men, see to it that they so act as not to incur accusation at God's hands, nor to offend the king, and where a suit arises in their courts concerning the men belonging to other barons, let the matter go before the king's justiciary, inasmuch as it is one that appertains to him only; and should there be barons who possess no courts of their own in the hundred where the particular proceeding arises, it is to be heard and settled at the nearest ecclesiastical district where there shall be the king's ordeal, saving always the rights of these barons themselves.

*The Divisions of Shires and Hundreds.*<sup>1</sup>

Cap. 13. The divisions of the shires properly form part of the king's jurisdiction, and attached to them is the king's highways.<sup>2</sup> The divisions of the hundreds and wapentakes belong to the earls and the viscounts (the sheriffs) assisted by the County Court.

*Concerning "frithborgs," i.e., the security for keeping the peace.*

Cap. 20. There is another mode of protection ("pax") of the most important nature, that by which all persons are more firmly assured of their personal safety, to wit, by that form of safety and security which the English call "frithborgs," all save the Yorkshire folk, whose (equivalent)

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<sup>1</sup> It should be remembered that these continued to form the divisions upon and after the Conquest.

<sup>2</sup> Under this was included the safety of travellers on these highways, the proper condition of the roads and the carrying out the repairs of the ways and bridges over and connected with them. All these were part of the king's *imperium*, and were under the superintendence and care of the king's reeve.

term is "tenmanne-tale," because of the number of the body—ten. And what it is is this. Throughout all the towns of the whole kingdom, associated under the tenmen system, all persons are bound to be under the tithing pledge; so that if one of the ten transgresses, the other nine have him to law (for the purpose of standing his trial). Should he escape, and they make return that they cannot have him to law, a term of not more than twenty days and one over is given them by the king's justiciary. Then, if they can find him, they must bring him before a justice. The offender must make good out of his own effects all the damage he has done, and even with his own body, should this be the penalty imposed.

If, however, he cannot be found within the above-mentioned district, inasmuch as there is in every "frithborg" one headman, whom they call "frithborge-heved," that headman must take two of the better men in his own frithborg, and, from the three frithborgs nearest his own boundaries, the headman of each, and also from each of these two of the better men, if he can get them; and with the aid of these eleven, himself being the twelfth man, let him purge himself and his "frithborg," if he can, from the offence and from the escape of the aforementioned malefactors. If he cannot, he must make good the damage, as though it came of his own doing, out of the property of the malefactor as far as it will go, and then out of his own; and all the twelve must make reparation before the justice to whatever extent the lawful order of the justice goes. And should they not be able to make up the jurors from the neighbourhood out of their own district, they must swear nine,

and by their oaths free themselves. Should they be able to lay hands on the wrongdoer, let them bring him before the justice if they can; if not, let them tell the justice where he is.

*The Description of the different Liberties.*

Cap 21. Archbishops, bishops, earls, barons, and knights used to have, under their own frithborg their own men and their own special servants, to wit their stewards, cupbearers, chamberlains, cooks, bakers. Also they had under their own frithborg their esquires, or other their servants; so that if these committed trespasses, and in consequence the complaint of the neighbourhood arose against them, their masters had them to right in their own court, supposing they had sache and soche, tol and theam, and ingfangenthef.

*What Sache, Soche, Tol, Theam, and Ingfangenthef mean.*

Cap. 22. Soche is as follows: where a person inquires judicially into some matter on his own land, even if that matter be theft, the question of guilty or not guilty is within his own jurisdiction. Sache is this: where one person sues another person in a claim as to which there is no suspicion of deliberate falsehood or chicanery, and his opponent denies or objects to the claim, the remedy for damages and costs, or for the costs, is within the jurisdiction of the lord. Tol, which we call "the-loneum," is the same as the privilege of buying and selling within the limits of the lord's lands. Theam is this: where one person demanded warranty of another, in whose hands stolen property was found, and this per-

son was not able to give his warranty, the thing in dispute was retained under temporary forfeiture, and the privilege of inquiring into the dispute, and awarding against the claimant, if he failed, attached to the lord's district. Concerning Ingfangenthef, the privilege of inquiry into charges of larceny against a man of his own, supposing he was captured within his lord's lands, belongs to that lord.

As to all others, who do not possess the above-named privileges, they must resort to the king's justiciary, whether in hundred, or wapentake, or shire.

*Why the frithborg was established.*

Cap. 28. Forasmuch as folk saw that some foolish persons wilfully did wrong to their neighbour, the wiser ones took counsel together how to restrain them; and so they have appointed justices over every ten frithborgs, whom we may call the ten-men, Anglice tyenthe-heved,—that is, ten heads. Now these, in the towns ("villas") and throughout the neighbourhoods, dealt with the matters brought before them; and as breaches of law arose, imposed penalties and made regulations, to wit for pastures, meadows, harvestings, for disputes between neighbours, and for many other such matters as frequently arise.

Cap. 29. When cases of a larger nature arose, they referred those to the other more important justices, whom the aforementioned wise men of the place appointed over them, to wit, the ten "ten-men." These we call hundred-men, because their jurisdiction is over the hundred frithborgs.

During the few years of the reign of Edward the Confessor, England, though nominally Saxon, was (under the

influence of his Norman counsellors, and by his own Norman sympathies) steadily progressing towards a change of dynasty and towards the new habits of customary and social life which the victory of William the Conqueror imposed upon her.

Here the curtain falls on England Saxon and Danish, to rise again upon new ideas and a new life, when, as Wamba said, the old proverb was made true,—

“Norman saw on English oak,  
On English neck a Norman yoke,  
Norman spoon in English dish,  
And England ruled as Normans wish.”

Yet was the change, however galling and bitter to the conquered during many long years of the occupation, not without benefit in the long run, both to the temperament, the character, the genius, and to the political and social life of Englishmen, as will, I hope, hereafter be shown.

## LECTURE XVII.

### *NORMAN ENGLAND.*

The Norman Invasion—Causes of its Success—Harold and William — Their Characters — King Edward's Promise to William — Harold's Promise to William—Harold Hardrada's Invasion—Difficulties of Harold of England—The Immediate Consequences of the Norman Invasion—Social gains to England from the Conquest—General gains therefrom—Chivalry and the Normans — Chivalry and Feudalism — Chivalry: its Characteristics — Influence of Chivalry on Social Life—Chivalry: its Faults—Hallam's Eulogium on Chivalry.

I HAVE thus brought my inquiry into the history of social and political life in Britain down to the period of the Norman invasion, and I shall now devote my remarks to the consideration of the Norman Conquest, and its influence upon the life and constitution of England. But before I proceed to examine this subject, a query, and not an unnatural one, presents itself.

It is this: How came it about that the conquest of England could have been achieved in the complete and successful manner which history shows us did follow the bold and hazardous attempt of the Norman king to plant his banners on a hostile shore, separated by the sea from his own country, and in the face of an opposition which the warlike character of the Saxon race, and the resources at the command of their King Harold, promised to be of

the most severe and exhausting character, and that, too, in an enemy's country where every inch of ground might be made available for a long and protracted defensive war?

The causes that led to the complete success of the Norman and to the utter discomfiture of the Saxon may be looked at from two points of view—the moral and the material aspect.

In the moral aspect two facts present themselves to notice. The one is the mind and genius of the two opposing leaders; the other is the position of each of them in regard to their respective claims to the crown on the death of Edward the Confessor.

That each was a bold and successful warrior, as shown in many a stout and hard-fought battle, each pre-eminent over every other general of the day, the record of the times establishes beyond all doubt.

But to courage in the field and skill in generalship, William added the art of reaping the fruit of his victories, and of consolidating his power by wise administration, and by a careful selection of men of ability to assist him in his work of government.

As compared with William, Harold was a warrior, but he was very little more than that.

What William was is so well described by Professor Freeman in his recent little monogram on William the Conqueror,<sup>1</sup> that I must refer you to that learned author's own words.

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<sup>1</sup> See "William the Conqueror," by E. A. Freeman, D.C.L., LL.D. The Twelve English Statesmen series by Macmillan & Co., 1888, at pp. 4 and 18.

Whether Harold would have made a wise as well as a good king had there been no invasion, or had he been able to defeat the force that William brought against him, is somewhat doubtful.

Mr. Pearson's criticism of his character is not a very favourable one.<sup>1</sup> One thing is plain from a comparison of the two men, that Harold was as far below William in statesmanship as he was in consistency of conduct. He offered Tostig when Tostig was powerful the earldom taken from him when he was weak, and he wavered the day before he died on the question whether he should not dismember England by signing a treaty with the invader.

But there was another moral influence in William's favour which the circumstances of the times and his own ability enabled him to work upon with considerable force.

That influence was derived from a promise which, on William's visit to England in A.D. 1051-52, Edward had made him, that on the latter's death the Duke of the Normans should be his successor to the throne of England.

In what form it was made is not clear, but that some such promise was made, Professor Freeman thinks is true; and that William's homage to Edward was done in the character of a destined successor to the English crown is equally clear.<sup>2</sup>

No doubt the Saxon king did not look upon his promise as one very binding on his conscience, for on his death-bed he made a recommendation to his witan not in favour

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<sup>1</sup> "History of England," vol. i. ch. xxi. pp. 346 and 347.

<sup>2</sup> "William the Conqueror," ch. iii. pp. 27 and 29.

of William, and acting on this recommendation the witan elected Harold as his successor.

But William had another promise in his own favour, and that was one made by Harold himself, for about this fact there seems to be no question. The story runs that, on the occasion of a second visit to Gaul, Harold fell accidentally into the clutches of Count Guy of Ponthieu, and was rescued from him at some cost in ransom and grants of land by Guy's overlord, Duke William.

In return for the favour thus bestowed upon him, Harold, in some solemn form, swore, first, to become the man of William, much as William had become the man of Edward; and second, to marry a daughter of William, promising at the same time to secure the kingdom of England for William at his death. It is true that he might plead, in answer to the demand of William for compliance, the fact that an oath thus extracted from him was not a binding one, and he might set up against William's claim to the throne the declaration of Edward, and the election of the witan in his favour.

But one important result was that William was able to appeal, and did appeal vigorously, to emperor, kings, princes, Christian men in every Christian land. Moreover, he appealed to the head of Christendom, the Bishop of Rome, and, as Professor Freeman says, "that appeal was strangely successful."<sup>1</sup> Thus William set out on his enterprise with all Europe and the pope in his favour,

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<sup>1</sup> See "William the Conqueror" (Freeman), ch. vii. pp. 63-77; and also Thierry's "History of the Norman Conquest" (Bogue's edition), vol. i. book iii. pp. 146-150.

convinced of the righteousness of his cause, and able to point to his adversary as a faithless and perjured individual.

And so, with the pope's blessing, and in a war that was now a holy one, adventurers from most French-speaking lands flocked to his standard, eager to take part in an expedition that promised rich rewards in plunder, and confident in the skill and energy of a captain whose valour and wisdom had gained for him a renown unequalled by any other leader of the day.

If, then, the moral influences were largely on William's side, the material ones were not less so. At no more propitious time for William's fortunes could the passage of his ship and the transport of his men have taken place than the exact time of their departure. At no more untoward one for the English nation.

The stars in their courses fought against Harold. For in the very month of September the wind, hitherto adverse to William's sailing, had changed, and so he was able to transport his fleet across the channel and land his troops at Pevensey.

In the meantime a formidable invasion of England had taken place in another and distant quarter of the island. Harold, the King of England, had to hasten by forced marches to meet Harold Hardrada (Harold of Norway) on the Yorkshire coast. At Stamfordbridge (September 25th, A.D. 1066) the two armies came together. There Hardrada was defeated, and Tostig (the Saxon) was slain.

But three days later (September 28th) William landed, and Harold, the king, had again to hurry from north to south to encounter a new and more formidable opponent.

Two difficulties weakened Harold's chances of success. They were these: One was the necessity he was under of suddenly filling up the gap which the fierce fight at Stamfordbridge had made in the ranks of his army. All that he could do was to get together such men as could be found, in order to supply the place of the picked soldiers who had fallen on the field of battle. But such recruits as he was able to obtain were men of an inferior quality, and utterly lacking in the discipline required for the emergency which now presented itself.

This seems to have been a real cause of the defeat at Senlac. For when at the crisis of the fight, after an obstinate resistance, in which the fortune of the day inclined strongly to the English side, these inferior troops were tempted to rush down the hill away from their entrenched and safe position, in order to chase the Bretons whom they had driven back; then the line of defence was broken, and the advantage of the ground selected by the Saxon king was lost. Thus the great battle was gained by William, and England was left without leaders, for Harold and his brothers were slain.

The other difficulty to which I have alluded arose out of the treachery of the two earls, Edwin and Morkere.<sup>1</sup> They had been ordered to follow Harold with the full force of their earldoms. This they took care not to do.

Thus did the marvellous fortune which had steadily befriended the Norman king show itself all along the line of his adventure.

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<sup>1</sup> See as to this, Freeman's "William the Conqueror," ch. vii. p. 88. Thierry omits to draw attention to the misconduct of these two earls.

The promise, or alleged promise, of the succession to the English crown by Edward; the promise and oath in confirmation of it by Harold to William; the intense interest shown in the Norman's cause by the European princes and powers; the favourable winds; the Norwegian invasion at the very time when those winds were bringing the Norman ships to England; the desperate fight in Yorkshire; the loss of tried and hardy warriors in Harold's army, and the treachery of the Saxon earls, were incidents that marked in the strongest light the "wonderful luck of William," and helped him to achieve so easily and so completely as he did the conquest of Saxon England.

His own skill, his own superior energy, and his statesmanlike qualities of mind enabled him to gain a second triumph greater than his first, to wit, the consolidation of his Norman dominions. The conquest and retention of England throws that into the shade, and marks William as one of the great makers of history.

On the course of events that followed the battle of Senlac (or as it is more generally known, of Hastings), I do not purpose to dwell. As I have stated above more than once, I am not dealing with a history of the events that have presented themselves for notice; but with the progress of social and political life in that part of Europe that has acted upon English, social, and political life.

Looking at the immediate consequences of the Norman Conquest, so far as England is concerned, there is no doubt that they were most disastrous to the conquered race.

A host of adventurers settled in all directions. The

rapacity and brutality of these new comers, ecclesiastical as well as lay, for a long period vexed the land, produced widespread misery, and impressed on the English portion of the community a feeling of hatred as intense as it was lasting.

Yet from a social as well as from a political point of view, there are features in the conquest not only of a compensating character, but, as a matter of fact, of a beneficial one in the long run.

One point above all should be carefully borne in mind in reviewing the positive results of the Conquest, a point insisted on by Professor Freeman, and before him by the learned Frenchman, Thierry.<sup>1</sup> What did follow William's victory was not a mere change of government, but the intrusion of a whole people into the bosom of another people broken up by the former; an immigration on a wholesale scale of one set into the land of another set; breaking up the component parts of this latter set into scattered fragments which were only admitted into the new social order as personal property, as "clothing of the earth" (*vestura, fructus quilibet agro hærens*).

What we find is two nations: the English by origin and the English by invasion, conquest, and immigration; at first divided on the face of the country, living under different conditions for a time. The one set rich and free from taxes, the other poor, depressed, overwhelmed with burdens; and yet (as will be shown by-and-by) both so

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<sup>1</sup> See Freeman's "Norman Conquest," vol. i. ch. i., Introduction (3rd edition, revised, 1877); and Thierry's "History of the Norman Conquest," vol. i. book vi. (at pp. 323, 324, in Bohn's European Library edition).

much thrown together and intertwined one in the other, as eventually to unite in one body, wherein the sterling qualities of each set, acting and reacting one on the other, produced socially and politically results of the most beneficial kind to the country.

From a social point of view, Saxon England gained much by the advent of its Norman settlers, who, in their turn, learned something from the despised Saxons.

In the domain of letters, England was benefited by the introduction to its shores of scholars like Lanfranc and Anselm, whose zeal for the promotion of learning had been exhibited in Normandy, where they had founded a school unrivalled in its own days.

In the matter of legislation and law-making, the Norman lawyer saw charters and codes of law in Saxon England unmatched by anything that his own country could show.

Again, the Norman mechanic found in England workmen whose perfection in mechanical arts and in embroidery was renowned throughout Europe.

Whilst England learnt from her conquering neighbour the splendour and glory to which the science of architecture might be brought in the cathedrals and castles that their Norman settlers scattered over the land.

In the habits of life, too, as well as in the cultivation of domestic comforts, England was a gainer from the introduction of a more cleanly style of living and more courtly manners.

With all his sturdiness of character, the Saxon was wanting in that which the Norman undoubtedly possessed—the virtues of gentleness and of large-handedness.

Moreover, that love of adventure and that inclination to chivalry which, as I have already pointed out, were among the characteristics of the Norman incomers, must have had a wonderful influence for good on the country of their adoption.

“To sum up all,” and I use Mr. Pearson’s words, “England without the Normans would have been mechanical not artistic, brave not chivalrous, a state governed by its priests instead of a state controlling its Church. It had lost the tradition of Roman culture, and during half a century of peace had remained barren of poets, legists, and thinkers. We owe to Normandy the builder, the knight, the schoolman, and the statesman.”<sup>1</sup>

I have just referred to the love of adventure and the inclination to chivalry which were specially noticeable among the characteristics of the Norman invasion. I therefore take this opportunity now of saying something on the subject of chivalry, a sentiment of very ancient origin, but largely developed in England after the Norman invasion. Connected with the feudal notions so deeply impressed upon us by our Norman neighbours, was one institution which materially influenced the manners and habits of the people whenever its aspirations and its sentiments made their appearance. I allude to that to which I have just before referred as a benefit conferred on the Anglo-Saxon turn of mind; viz., chivalry. M. Guizot has written upon this subject with his accustomed eloquence and with all that acquaintance with its history that warrants us as looking upon him as a trustworthy

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<sup>1</sup> Pearson’s “History of England,” vol. i. ch. i. p. 402.

authority. In the third volume of his "History of Civilization in France,"<sup>1</sup> he has devoted a chapter to the subject that is well worthy of a careful perusal. I shall content myself with extracting from that chapter a few passages.

And first he shows us that chivalry at the middle of the eleventh century was by no means an innovation, or an institution brought to life by some special necessity, and fashioned into form with the design of meeting and complying with that necessity. It was framed much more simply, much more naturally, much more obscurely

It was the progressive development of ancient facts, the spontaneous emergence into life and light of Germanic manners and feudal relations.

It took its rise in the interior of castles.

In its elaborate ceremonialism, in its moral development, in its fantastic language, and in the peculiar devotion to woman which were some among the more remarkable features of chivalry as exhibited at the period of the Norman Conquest, and for two centuries later, there is nothing to be found in Anglo-Saxon society that resembles it.

Still, beyond all doubt the influence of the Church had made itself felt not only in the matter of private feud but in that of public warfare, in the efforts made by the clergy to introduce an improved morality, and to infuse a holier element into the profession of arms than had hitherto been thought of.

"The Danish invasion had made a war a duty to the

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<sup>1</sup> See Sixth Lecture, pp. 104-118 (Bohn's edition).

mass of men who were not prepared for martyrdom, and who could only defend their faith, let alone their wives and children, by taking up arms against the heathen. All England became warlike to resist the Danes. The strife was a crusade, and the clergy, who followed its progress with their prayers, at last learned to baptize the warfare on the success of which society depended, and the knight was initiated with a solemn ritual to service in the field.<sup>1</sup>

Whether in this we can trace anything like an idea of chivalry may or may not be the case. But beyond this there is nothing to prove that knighthood and the love of war, tempered by moral teaching and softened by devotion to woman, which is the characteristic of chivalry, ever showed itself in Britain.

One reason may be assigned for this, that feudalism, the forms of feudal life, and the fashions of feudal society had never gained a firm footing in this country.

Between feudalism and chivalry there was so close a connection that one grew out of the other and served to transfuse as well as add lustre to it, for when once the feudal society had acquired some fixity, some confidence in itself, in the customs, feelings, facts of all kinds that accompanied the admission of the young men to the rank of vassal warriors, it fell under the empire of influences, which were not long in imprinting on feudalism in its social aspect a new turn and another character. Religion and imagination, the Church and poetry, took possession of chivalry and made it a powerful means of

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<sup>1</sup> Pearson's "History of England, vol. i. ch. xx. p. 320.

attaining the ends which they evoked, of fulfilling the moral needs which it was their mission to satisfy.

Perhaps the most remarkable feature in the development of the chivalrous feeling I am speaking of was the power and influence acquired by the Church in this part of feudal life.

Next to that, if not consequent upon it, was the lofty, moral sentiment which, though not sincerely accepted, yet was in word at least insisted upon, and impressed on the aspirant to knighthood at the time of his reception.

In the ceremony of admission the ecclesiastical influence is visible in full detail. By the bath and the white tunic the aspirant was reminded of the necessity of purity; by the red robe he was taught to remember that his blood was to be shed in the service of his faith; and by the "saga," or close black coat, death, which awaited him as well as all men, was symbolised. Then followed fasting, a night of prayer, confession to the priest, administration of the communion, the mass of the Holy Ghost, and a sermon, in which the duties of knights and the new life he was to enter were preached.

His sword was blessed by the priest, and so with this sword hung round his neck, after making his vow to his lord to acquit himself well of his duties as a knight, his request to enter into the order of knighthood was granted by his lord, after which followed his equipment in his new armour by knights or sometimes ladies.

The intervention of the ecclesiastical influence proves the anxiety of the Church to associate religion with all the phases of an event so solemn in the life of warriors.

With equal force is this influence marked in the moral

character and the moral sentiments that were stamped upon knighthood. As an example of this I will give first three or four extracts from the oaths that the recipients swore on their admission.

They are as follows: "To fear, revere, and serve God religiously, to fight for the faith with all their strength, and to die a thousand deaths rather than renounce Christianity. To maintain the just right of the weak, such as widows, orphans, and maidens; on a good quarrel to expose themselves for them according as necessity requires, provided that it be not against their own honour or against their king or natural ally. That they would never offend any one maliciously nor usurp the possession of another, and rather that they would fight against those who did so. That avarice, recompense, gain, or profit should never oblige them to do any action, but only glory or virtue. Above all things, that they would be faithful, courteous, humble, and would never fail in their word, for fear any ill or loss that might thence happen to them."

Then I will give an extract from an old ballad taken out of the manuscript poems of Eustace Deschamps.<sup>1</sup>

"You who would enter the orders of chivalry, befits you to lead a new life; devoutly to watch and pray; to fly sin or pride and all villany; you must defend the Church, and take under your charge the widow and the orphan; you must be valiant and defend the weak, upright, loyal; taking nothing of other men's. By this rule must the knight govern himself.

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<sup>1</sup> Quoted by Saint Palaye: "*Mémoires sur la Chevalerie*," t. i. p. 144.

"Let your heart be humble; ever labour and pursue deeds of chivalry; be your warfare loyal; travel far and near; seek tourney and joust for your mistress's honour; a true knight must in all things pursue honour, so that no blame may befall him, nor cowardice be found in his life; let him ever esteem himself least of all. By this rule must a knight govern himself.

"He must love his seigneur truly and fully, and above all things guard his seigneur; he must be liberal and a true lover of justice; he must seek the company of upright men, hear their sayings and profit by them; he must study the prowess of valiant warriors, that he himself may achieve great deeds after the example of King Alexander. By this rule must the knight govern himself."

In the "Morte d'Arthur," you will see the excellence of the true knight well described.

Sir Ector, in his eulogy over the body of Sir Launcelot du Lac, thus bewails him:

"Ah, Sir Lancelot, thou wert head of all Christian knights, now there thou liest; thou wert never matched of more earthly knight's hands. And thou wert the curtiest knight that ever bare shield. And thou wert the truest friend to thy lover that ever bestrode horse. And thou wert the truest lover of a sinful man that ever loved woman. And thou wert the kindest man that ever struck with sword. And thou wert the goodliest person that ever came among a press of knights. And thou wert the meekest man and the gentlest man that ever eat in hall among ladies. And thou wert the sternest foe to thy mortal foe that ever set spear in rest."

That the introduction of chivalry into England must have had an important influence on social life I think may be conceded.

As Mr. Pearson well points out:<sup>1</sup> "The secret of its strength lay in its human elements, its regard for life and its infinite tenderness. With sympathies so wide it could not restrict itself to the narrow circle of caste. Throughout English history, the man who had won his spurs by fair conduct in the field might wear them. The gentleman without fortune might command barons in war and be called brother by his king. To be brave, loyal, and generous established a claim to the title-deeds which were good throughout Europe. The universal Church, with its one tongue and democratic hierarchy, did much for society; but it formed a world by itself. Chivalry invaded the very strongholds of rank and clung like ivy round the grey battlements of feudalism, at once beautifying and destroying it."

Loyalty, courtesy, liberality, and justice were the virtues essential in the estimation of mankind to the character of a knight.

The attestation to their importance, and even the mere attempt to insist upon and to cultivate them, must have had a purifying effect upon the coarseness, the rudeness, and the injustice of the older forms of life that had pervaded the ranks of society in this country.

No doubt there were, as is the case with every human institution, evils produced by the spirit of chivalry to which one cannot shut one's eyes.

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<sup>1</sup> "History of England," vol. i. ch. xxxiv. p. 603 *et seq.*

With the most fanciful refinements of passion, the poetic writers of its times in their amatory strains mingled the grossest immorality.

An undue thirst for military renown was another fault that chivalry nourished; "and the love of war," as Mr. Hallam tells us, "sufficiently pernicious in any shape, was more founded on personal feelings of honour and less on public spirit than among the citizens of free States." Moreover, the character of knighthood widened the separation between the different classes of society, and confirmed that aristocratical spirit of high birth by which the large masses of mankind were kept in unjust degradation.

But in spite of these deteriorating elements in the composition of the chivalrous sentiment, the spirit of chivalry has touched our old English life with a beneficial, nay, I think I may say an ennobling, influence.

"It has left," says Mr. Hallam, "behind it a valuable succession. The character of knight gradually subsided in that of gentleman; and the one distinguished European society in the sixteenth and seventeenth centuries much as the other did in the preceding age.

"A jealous sense of honour, less romantic but equally elevated, a ceremonious gallantry and politeness, a strictness in devotional observances, a high pride of birth and feeling of non-dependence upon any sovereignty for the dignity it gave, a sympathy for martial honour, though more subdued by civil habits, are the lineaments which prove an indisputable descent. The cavaliers of Charles the First were genuine successors of Edward's knights, and the resemblance is the more striking if we ascend

to the civil wars of the League. Time has effaced much also of this gentlemanly as it did before of the chivalrous character. From the latter part of the seventeenth century its vigour and purity have undergone a tacit decay, and yielded perhaps in every country to increasing commercial wealth, more diffused instruction, the spirit of liberty in some and of servile obsequiousness in others, the modes of life in great cities, and the levelling customs of social intercourse." <sup>1</sup>

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<sup>1</sup> Hallam's "Europe During the Middle Ages," vol. iii. ch. ix. part ii. p. 411.

## LECTURE XVIII.

### *NORMAN ENGLAND.*

Political Aspect of the Norman Invasion—Bishop Stubbs on the Norman Conquest—The Early Chroniclers—Translations of Excerpts from their Works—The Anglo-Saxon Chronicle and the *Historia Novorum* of Eadmer—The Laws of King William—His Ordinance as to the Spiritual and Temporal Courts—Guizot on the Norman Conquest—The Norman Conquest Compared with the Barbarian Invasion of Europe—Norman Social Life Compared with that of the Anglo-Saxons—Opposite Views of Earlier English Writers on the Anglo-Saxon Institutions.

FROM the social aspect of the Norman invasion, and its consequences on the conquered population, I turn to the political aspect. Here, too, we possess a fund of information in the works of the able and learned writers whose research and learning have illustrated and adorned this period of English history. Thierry, Lappenberg, Hallam, Palgrave, Freeman, Pearson, have all laboured with success.<sup>1</sup> The treatises of all are well deserving of careful

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<sup>1</sup> I need hardly say, that of all the writers here enumerated, Professor Freeman is the one who stands out pre-eminently as an authority on the history and characteristic features of the Norman Conquest. The profound learning and deep research, the acute criticism, and the solid nature of the information displayed and conveyed in the "*History of the Norman Conquest*," make it not only a classical treatise on the incidents of that event, but a mine

study, and there is so much of interest in the pages of all, that one is tempted to cite profusely from their volumes. But the very profusion of matter they present for notice is a source of embarrassment.

There are, however, two writers not included in the list of names above-mentioned, to whose works I can refer, for this reason, that the extracts from the early chroniclers, the Norman charters, and from Domesday book, to be found in one of them, afford an excellent illustration of the character of the events now under review; and in the essays of the other on the early history of France we have a valuable account of the Anglo-Norman constitution, and its influence on later English history.

The authors I am speaking of are the Bishop of Oxford (Dr. Stubbs) and the French statesman and historian, M. Guizot.

Bishop Stubbs has prefaced the extracts from the original documents and public records selected by him with a short notice of the leading features of William's reign. He draws attention to the king's professed intention to rule as the West Saxon kings before him had ruled; to the resistance of the Saxon people caused by the tyranny of the "king's justices regent," and to the resulting forfeiture of lands inflicted on the Saxon landowners. He notices, as a consequence of this, the change in the institutions of the country to the Norman feudal

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of wealth on the various topics in direct connection with it or collaterally related to it. The admirable index appended to the five volumes of the history is an immense assistance to the student of the early story of our English Constitution.

type, and the rise of a feudal nobility likely to be antagonistic to the king's power, side by side with the system of self-government still subsisting among the people. Then he adverts to the struggles that followed between the Crown and the barons, ending in the almost complete extinction of the nobility of the Conquest. Further, he notes the beginning of a set of events "which compelled the king to foster every remnant of political independence among the English as a check on the rebellious and tyrannical policy of the great feudatories. Lastly, he specifies as the prominent result of the Conquest, regarded in its constitutional aspect, the continuing assimilation of the government to the feudal model."<sup>1</sup>

Of the early chroniclers from whom excerpts are given in the original Latin language by Bishop Stubbs, I must content myself with abbreviated notices. Of those chroniclers—indeed, of all the old writers who throw the light of ancient narrative upon Anglo-Saxon history, as well as upon that of the Norman period—very useful information will be found in the "Literary Introduction" to Dr. Lappenberg's "History of England under the Anglo-Saxon Kings" (see Bohn's edition, 1884, vol. i.). The aim and object of each chronicler, the dates of their works, the editions that have appeared, and the leading characteristics of the works themselves, are set out in detail.

Bishop Stubbs' first excerpt is from the "*Gesta Gulielmi*," by William of Poitiers, at page 145 of the edition by Baron Maseres.

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<sup>1</sup> "Documents Illustrative of English History," part iii. p. 76 (edition 1870).

The author describes the solemn appeal of the Archbishop of York to the English to accept William as their crowned lord; of the joyful and unanimous assent thereto made by the English as well as Norman subjects; and of the coronation and enthronization of the king.

The next excerpt is from Florence of Worcester, the Latin translator of the Saxon Chronicle. He notices shortly the coronation of the king with all ceremony before the altar of Saint Peter, in the presence of the clergy and the people; the king's oath to defend the churches of God and their rulers, to mete out justice to all the people, to enact and uphold good laws, and to put down robbery and forbid unjust dooms.

Then from the "*Gesta Regum*," iii. § 279, of William of Malmesbury, we get the account of the sumptuous and magnificent banquetings at the festal tide of Christmas, Easter, and Pentecost, holden respectively at Gloucester, Winchester, and Westminster, when, in obedience to the royal summons, came all the magnates of the land, and they, with the ambassadors from foreign countries, witnessed the crowds of guests and the splendour of the show. "To this festive custom," says the writer, "William's immediate successor steadily adhered, but the king who followed him omitted it."

In the excerpt from Roger Hoveden's "*Chronica*," ii. 218, we are told of the summons by William, in the fourth year of his reign (A.D. 1070), to the English nobles and wisemen of every county, to hear from the lawyers of the land what were the laws and customs in force; and further, to see that in every county twelve men should be chosen, and bound by oath to declare and

carry out all the customary rules and solemn decrees of the land, without omission or addition or prevarication.

In two other excerpts from Florence of Worcester, referring to the years 1084 and 1086, we learn that William took from every hide of land throughout England six shillings; that he caused the great survey over all England to be made, "whence arose much bloodshed, vexing the country side;" that he conferred the honour of knighthood on his son Henry at Westminster; and that he summoned the archbishops, bishops, abbots, counts (or *gesiths*), barons, and viscounts (or sheriffs), with their armed array, to meet him at Salisbury. "There they came, and there he forced their armed followers to swear fealty to him against all men."

In the passage from Ordericus Vitalis (lib. iv. c. 7), the chronicler informs us of the king's revenue, one thousand and sixty pounds a day, besides redemption moneys for taking up honours, and payments for holding royal offices; of the king's careful and personal inquiry into the affairs of his kingdom, and the accounts of his treasury; above all, of his distribution of lands among his military followers, whereby he was enabled to gather under his standard an array of sixty thousand troops as promptly and continuously as his will might decree or the state of affairs might require.

I cite two extracts somewhat more in extenso: one is from the Anglo-Saxon Chronicle, the other is from the "*Historia Novorum*" of Eadmer<sup>1</sup> the monk, the pupil, friend, and biographer of Anselm.

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<sup>1</sup> The reader will find a very good criticism on Eadmer as a writer

In the former of these we have the Saxon writer's pathetic notice of the great Domesday survey. In the latter one we have a monkish chronicler's account of the attitude of the king towards the pontiff of Rome and the ecclesiastical dignitaries of England.

This is what the Saxon writer says.<sup>1</sup> At mid-winter the king was at Gloucester, and held his court there five days. (There a synod of the clergy was held for three days.) "After this the king made a great council, and spoke very deeply with his witan concerning this land, how it was held, and what were its holders. He then sent his men over all England into every shire, and caused them to ascertain how many hundred hides of land it contained, and what lands the king possessed therein; what cattle there were in the several counties, and how much revenue he ought to receive yearly from each. He also caused them to write down how much land belonged to his archbishops, to his bishops, his abbots, and his earls, and that I may be brief, what property every dweller in all England possessed in land or in cattle, and how much money this was worth. So very closely did he cause the survey to be made, that there was not a single hide, nor a rood of land, nor—it is shameful to relate that which he thought no shame to do—was there an ox, or a cow, or a pig passed by, and that was not set down in the account, and then all these

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on the events of his time in Berington's "Literary History of the Middle Ages," book iv. pp. 175, 176 (Bohn's European Library).

<sup>1</sup> See the Anglo-Saxon Chronicle, A.D. 1085, at p. 458 (Bohn's edition).

writings were brought to him." A.D. 1086. In this year he wore his crown, and held his court at Winchester at Easter, journeying on to Westminster, where he stayed during Pentecost. "Afterwards he travelled about, so that he came at Lammas to Salisbury, and there came to him his witan and all the land-sitting men that were over all England; and there, too, came their man's men (or vassals), and all submitted themselves to him and were his men, and to him they swore the oaths that they would become to him faithful against all other men." This was the year in which the king crossed over to Normandy. It was a year of pestilence and storm, of bad harvests and of death, so that things ever grew worse and worse with the people. May almighty God mend them when such is His will."

The following extract from Eadmer, "*Historia Novorum*," i. page 6, is valuable for the proof it gives of the king's resolute determination to allow of no interference with his claim to absolute rule.

"Some of the matters, the observance of which William has recently insisted on, I will narrate:—

1. "He will not permit any one to receive an Apostolic Legate from the pontiff of Rome within his domains save by his own authority; nor will he allow such an one, under any pretext, to take up his mission unless his letters of appointment are first submitted to him.

2. "Again (the king) did not allow the Primate of England—I mean the Archbishop of Canterbury or Dover—even though he was acting as president of a general synod of the bishops, to make any decree or

prohibition unless the matter thereby provided for was in accord with his own will, and was previously sanctioned by him.

3. "Still less would he permit any of his bishops to think of directing against any of his barons or officials charged with the crime of incest, or adultery, or any capital crime, any public prosecution save under and by virtue of his own precept, or any excommunication or infliction of any ecclesiastical pains and penalties."

Such are some of the notices of William the Conqueror, of the events of his reign, and of his personal character, as recorded in the pages of the old chroniclers. I now give, in an English version, the statutes of the king cited by Bishop Stubbs, from the "Textus Roffensis": "They are," says that writer, "probably the sum and substance of all the legal enactments actually made by the Conqueror, independent of his confirmations of the earlier (Saxon) laws."<sup>1</sup>

*This is the Intimation which William, King of the English, with his chief men, published after the conquest of England:—*

1. "Imprimis that he (the king) wills that the one God be worshipped throughout all his realm, and that the one belief in Christ be kept ever inviolate, that peace and security be preserved among the English and the Normans.

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<sup>1</sup> As to William's legislation, see Freeman's "Norman Conquest," vol. iv. ch. xix. pp. 325, 326; and as to the legislation under the Norman kings, see vol. v. pp. 395-404, and note 4.

2. "Also we enjoin that every freeman affirm by fealty and oath that, within and without England, they will be faithful to King William, will aid him in all faithfulness to preserve his lands and honour, and, above all, well defend him against all his enemies.

3. "Now I will that all the men whom I have brought with me, or who have come after me, be in my peace and rest. And if any one of them shall be killed, let his lord have within five days his slayer, if he can; but if he cannot, let him thereupon pay me forty-six marks of silver out of the full value of the goods and effects of that lord. Should his goods and effects not be sufficient, let the whole 'hundred' where the killing took place make up and share the balance among them.

4. "And let every Frenchman who in the time of my kinsman King Edward was (living) in England, and participating in the English customary charges, called 'onhlote and anscote' (poll tax and general tax), still pay them in accordance with the law of the English.

5. "Further, we forbid the sale or purchase of any live stock (*viva pecunia*) except within civic bounds, and this in the presence of three trustworthy witnesses, also of any property of ancient title without surety and warrant. If (sale or purchase) be made otherwise than as ordered; then let payment and fine be exacted, and if persisted in, forfeiture.

6. "It was also decreed that if a Frenchman shall appeal an Englishman for perjury, or killing, theft, homicide, 'ran' (the English term for open robbery, which cannot be denied), let the Englishman defend himself by the ordeal of iron or by the duel, whichever he may

prefer.<sup>1</sup> But if the Englishman be infirm, let him find another man to take his place. Whichever of them is defeated, let him pay forty shillings to the king. If an Englishman appeals a Frenchman, and refuses to prove the charge by the ordeal or the duel, still I will that the Frenchman purge himself of the charge with an unbroken oath.

7. "This, too, I enjoin and will, that all persons have and hold the law of King Edward in all places and in all matters, in addition to those (rules) which I have made for the good of the English community.

8. "Let every man who is willing to be bound for a freeman be held to bail, so that his surety may have and hold him to justice, if he offends in any way. And if any one thus under bail escape, let the sureties see to the honest payment of the amount that may be truthfully claimed, and free themselves from the charge of fraudulent complicity with the escaped offender. Let requisition be made on the hundred and the county, as our predecessors on the throne have enjoined. And let those who ought in justice to appear, and refuse to appear, be summoned once; then if they refuse to appear a second time, let one ox be seized, and let them be summoned a third time. Should they not come a third time, let another ox be seized. If they do not come on a fourth summons, let a return be made as against the goods of the recusant, that the claim is a good one: this is called 'ceapgeld.' Then let forfeiture to the king follow.

9. "I prohibit every one from selling a man out of the

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<sup>1</sup> See as to the Duel and the Ordeal, Note Q in Appendix.

country on pain of forfeiture to me of all his belongings.

10. "I forbid the killing or hanging of any person for any offence, but let the (offender's) eyes be put out, and let him be mutilated. Let not this injunction be violated under pain of forfeiture of everything to me."

The ordinance of William the Conqueror, separating the spiritual and the temporal courts, marks a very important revolution which the laws of England underwent at the Conquest. Prior to William's reign—that is, in Saxon times—the bishop and the sheriff had exercised a joint jurisdiction throughout the country. This was now changed, and the bishop, as the ordinance shows, was thenceforth to hold his court separate from that of the sheriff. This ordinance is noteworthy for three reasons. In the first place, by the separation a new court was established in England, distinct from that of the sheriff, taking cognizance of ecclesiastical matters only, and independent of any lay control. In the second place, by the establishment of the bishop's court, the formal administration in the country was established and sanctioned of another body of law, hitherto unknown, called Canon Law, whose representative, down to comparatively recent times, was the ecclesiastical court once held in Doctors Commons.

In the third place, we owe to this ordinance the introduction of the Roman Civil Law, to which the Canon Law of the ecclesiastics had always been under no small obligation, and of which our Saxon legislators had no knowledge.<sup>1</sup>

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<sup>1</sup> Reeve's "History of the English Law," vol. i. ch. ii. . 68-75.

Under the shelter of this ordinance of William's, extravagant claims to jurisdiction were in early days made by the Church.

This led to a conflict between the Crown and the Church which, as a matter of history, involved in its progress events and results of no little interest, as well as value, from a constitutional point of view; a conflict that in the reign of Henry the Second was fiercely fought, ending in the Constitutions of Clarendon (A.D. 1164), whereby an attempt was made, and not without success, to give a rational limitation to the secular and religious jurisdictions, and to furnish a basis on which they might carry out their respective work in more harmony than had been the case prior to Henry's reign.

The ordinance runs thus:<sup>1</sup> "William, by the grace of God king of the English, to R. Barnard and G. de Magnaville, and P. de Valoines, and the rest of my 'fideles' of Essex, and of Hertfordshire, and of Middlesex. Greeting.

"Know all of you, and the rest of my 'fideles' who are in England, that the episcopal laws, which down to my time have not been well observed, or in accordance with the precepts of the sacred canons in the kingdom of the English, I, by the common council and consent of the archbishops, bishops, abbots, and all the chiefs of my kingdom, have adjudged to be amended. Therefore I order, and by my royal authority enjoin, that no bishop or archdeacon may any more hold pleas of episcopal laws

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<sup>1</sup> For the original text, see Thorpe's "Ancient Laws and Institutes," p. 213.

in the hundred court, nor submit to the judgment of secular persons any cause which relates to the cure of souls; but that whosoever has been proceeded against for any cause or offence, according to the episcopal laws, must resort to some place which the bishop has appointed or named, and there answer for the cause or the offence, and do what is right towards God and his bishops, not according to the law used in the hundreds, but according to the Canons and episcopal laws. Now, if any one through over pride has despised the summons to the bishop's jurisdiction, or has refused to obey it, let him be cited three times. If then he shall not come to clear himself, let him be excommunicated; and if need be, for the purpose of carrying out this summons, let the strong arm and justice of the king or the vice-comes (the sheriff) be called in aid, and he who, when summoned to the bishop's court, has refused to come, shall make amends for each separate summons. This also I charge, and by my authority order, that no sheriff, prefect, or officer of the king, nor any layman whatever, intrude himself in any way into the administration of law that belongs to the bishop; and that no layman submit any other man to judgment without the legal authority of the bishop. Moreover, let no judgment be given in any place save that of the bishop's jurisdiction, or that one which the bishop has fixed on as the proper one."

It is to the Norman Conquest that England owes the true commencement of her liberties.<sup>1</sup>

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<sup>1</sup> This, and what follows, is taken from "*Les Essais sur l'Histoire de France*," par M. Guizot, vi<sup>e</sup> essai, chapitre premier.

In the history of the fifth, sixth, and seventh centuries, as I have shown in my former lectures, the consequences of the invasion of Spain by the Goths, of Gaul by the the Franks, and of Italy by the Lombards, were most disastrous to the inhabitants of the conquered countries.

Anarchy and slavery followed the footsteps of the conquerors. The tribes of wandering barbarians spread themselves among the miserable people whose lands they seized. On the one hand, the new comers brought with them no social life, no fixed principles of government, nor any notion of national independence. On the other hand, the natives, the conquered races, witnessed the dissolution of their old political ties and of their old institutions.

They saw their rulers abandon their states in order to avoid the necessity of defending them, whilst they themselves were reduced to the position of inferiors and were rendered incapable of taking part, as of old, in the management of their own affairs. The lower classes were brutalized, the middle classes were ruined, the higher classes were utterly demoralised, public spirit vanished, the magistrates and citizens ceased to exist.

Among the barbarian immigrants social life had as yet no existence ; among the Roman subjects it disappeared.

Wandering bands, strangers to civil life, established themselves on a soil covered with a multitude of miserable and disorganised beings, no longer showing the semblance of a people.

The Christian clergy alone survived the shock. They alone offered to the old inhabitants of the land some support and some encouragement. But they had also to

marshal their strength for a contest, out of which it behoved them to come as victors. That fight and that victory were with and over the conquerors of the land.

This was a pressing necessity, one, too, whose realization in its turn worked mischief to the clergy, through the corrupting influences arising out of the very success which they had achieved.

None of these elements of destruction existed in England at the time of the establishment by William of his power in the eleventh century.

A barbarian race conquered a barbarian race. The Normans had been established for nearly two hundred years in Normandy. For more than five hundred years the Anglo-Saxons had occupied Great Britain. Among each of them social life, coarse and ill-regulated as it was, had existed for a long period. Neither of them had lost the spirit and the customs of their own ancient liberty.

The primitive origin of each was the same; institutions, if not exactly similar, at least analogous, had regulated them; and among each set of people these institutions were of the same character and of the same spirit.

There was no religious conversion necessary, for both of them professed the same faith. There was no fundamental opposition in their manners and style of life.

The great Saxons resided in their domains enjoying their ease. Hunters, surrounded by their "fideles," their habits of life were not unsimilar to those of the Norman barons.

It was not a case of barbarism issuing from the forests with civilization in ruins that the Normans were to encounter.

Two nations of warriors, fierce and ignorant, and moreover firmly established, found themselves face to face.

If there was any degree of social superiority visible, it was on the side of the conquerors. But the conquered race was not disposed to allow itself to be enslaved, nor to be entirely deprived of the means of resistance.

The conquest might entail much cruel wrong and a long oppression, but it could produce neither the breaking up of the two races into scattered bands or families, nor the permanent and almost voluntary degradation of one of them under the yoke of the other.

In the compulsory attraction of the two confronting bodies there were at once the means of resistance and the cause of fusion. This, in M. Guizot's opinion, was a decisive fact, and one which, up to his time, had been misunderstood by English historians and publicists.

A nation is unwilling to admit any debt to that one which is the cause, for a long period, of its own humiliation and misery.

Although the Norman yoke has long ceased to exist, although for many a century past the separate existence of Norman and Saxon has disappeared, yet the recollections of the twelfth century still remained and reappeared in the conflict of party warfare.

One set of English writers of M. Guizot's time troubled themselves little with Anglo-Saxon institutions. Another set, on the other hand, attributed a great importance to them, and ascribed to them the origin of all the country's liberties.

They noticed the fact that on the Continent the Conquest and the feudal forms resulting from it were not

able to produce anything in the shape of free government. They ascribed to the Normans that portion of despotism and feudalism that was visible in their own institution. They assigned to the Saxons all their own rights and guarantees of freedom.

Such a view is neither exact nor in conformity with the events. These Saxon forms, no doubt, have been the cradle of English liberty; but one may fairly doubt whether they would, without the Conquest, and of their own special force, have laid the foundations in England of a free government.

It was the Conquest which impressed upon English liberty a new force. Political liberty in England owes its birth to the position in which the two sets of people and their laws are found face to face.

In considering these Anglo-Saxon institutions and the results that flowed from them towards the end of the eleventh century, we shall find nothing, or almost nothing, that is analogous to what took place in other parts of the European world.

Between the fifth and eleventh centuries (as I have shown in a former lecture) free institutions, aristocratic institutions, and monarchical institutions were in conflict not only in Gaul but in Great Britain.

There is nothing to indicate the fact that towards the end of that period the system of free institutions was ready to triumph. On the contrary, everything tends to the belief that they were weakened and in decay in England as on the Continent.

The local institutions of the Anglo-Saxon were very little different from those that existed among the Franks.

The "thegns" or free proprietors met together in the courts of the *decuriæ*, of the centuries, of the county, under the presidency of the tything-man or tenth man, of the hundred men, and of the count (the earl) or his lieutenant (the sheriff).

In those courts justice was administered. There the greater part of the civil business of the locality was transacted. There, in short, all matters took place which interested the neighbouring region.

These assemblies, which at first were frequent, soon became less often resorted to. Soon the jurisdiction of the "tything-man," if it ever was a real one, disappeared. The court of the hundred became of less importance. The county court was rarely summoned more than twice in the year. The proprietors were enjoined to come in under penalty of fine. But this very penalty, and the incessant injunctions respecting it, visible in the Anglo-Saxon laws, prove clearly the negligent attendance of the proprietors.

In spite of the established regulations adopted by each neighbouring society to provide against the committal of offences, and to maintain the rights of property in each particular locality, it is clear that the principle of free institutions (that is to say, the open deliberations of the freemen in common) no longer preserved its old vigour.

Nor were these free institutions exposed to less danger in England than in France, under the antagonistic influence of aristocratic institutions, carrying with them the subordination of man to man.

## LECTURE XIX.

### *NORMAN ENGLAND.*

Anglo-Saxon England and Feudalism—The Witenagemot—England and Frankish Gaul Contrasted—The Anglo-Norman Kings and the Saxon Population—The Great Council—Knight Service—The General Council of the Barons.

AMONG English publicists the question whether feudal tenures existed in England before the Norman conquest has been largely discussed. The opinion of those who hold that they were not unknown in England has much to support it.<sup>1</sup>

Be this as it may, if there is any reason for doubt, it is solely in reference to territorial relations.

No one disputes the fact that before the Conquest a large number of freemen lived under the patronage of a lord, and that jurisdiction was often attached to the demesne.

This patronage, then, this jurisdiction, as we have seen, has often been everywhere the primary principle of the classification of individuals, and of individual dependencies, that is to say, of feudalism.

Its germ existed among the Anglo-Saxons as among the Franks, and among the former also, the general course

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<sup>1</sup> At all events, the elements of feudalism were there, though not worked into systematic shape, *e.g.*, homage, that is, the relation of every man to his lord; military tenure; heriots, and other incidents.

of events favoured its development at the expense of free institutions.

In centralizing systems of government we meet with the same tendencies and the same phenomena.

Undoubtedly royalty was very much weakened under Edward the Confessor, and that from the same causes which rendered it powerless in France under the Carolingians. Earl Godwine, Siward, lord of Northumberland Leofric, lord of Mercia, and many others, appear as great vassals but dangerous rivals of the king; independent in consequence of their own might, and ever ready to change that might into right, and to establish themselves as sovereigns in their own domain, in their lordships and in their counties. Harold, usurping the crown over Edgar Atheling, the legitimate heir, has a strong resemblance to Hugh Capet.

Evidently the tendency of sovereignty was to dismemberment. Monarchical unity was imperilled. National unity as yet was not compromised.

Originally it resided in the Witenagemot, or the Anglo-Saxon form of the Frankish Champ de Mars. Like the Champ de Mars, the witenagemot at first was the general assembly of the freemen, of the warriors.

Soon the consequences of the new element—viz., territorial property—that was introduced into the social state were manifested. The presence of a numerous class of freemen (no doubt the most numerous), that of the “ceorls,” appears collected round the chiefs whose domains they inhabited or cultivated. The witenagemot ceases to be the general assembly of the thanes, that is, of the proprietors; the proprietors are themselves divided.

Some of them, whether owing to their importance or to the extent of their possessions, or whether owing to the fact that they were companions and vassals of the king, form a distinct class under the name of "great thanes," or "royal thanes"; others are called "inferior thanes." The witenagemot becomes nothing more than the assembly of royal thanes or great proprietors.

At length even these individuals frequently neglect the duty of attending the meeting, remain isolated in their domains, trust to their own power and strength, refuse to submit to any public restraint, and exercise almost all the rights of sovereignty.

From the middle of the eleventh century the witenagemot, in spite of its successive changes, disappears almost entirely from Anglo-Saxon history.

And here we find a close resemblance between Saxon England and the country of the Franks.

Now, supposing that the Norman Conquest had not taken place, and supposing that Anglo-Saxon society had remained undisturbed by the immigration of the new comers, and had been left to work out its own destiny, what would have happened?

This is a mere matter of speculation. What would have taken place it is impossible to say apart from conjecture.

Yet, in spite of the general similarity of events that have been noted, there were some important differences between Great Britain and the Continent which must have produced different results.

In the English population there was more unity than was to be found in that of Gaul.

The old British people had been, if not completely

driven out or destroyed, at least reduced to such a condition that they had ceased to be of any importance.

A territory of much more circumscribed extent in England than in Gaul rendered the absolute destruction of central institutions and the dismemberment of the sovereignty and of the nation more difficult.

Notwithstanding their weakness, free institutions, such as those of the county courts, the corporations, and others, preserved more reality and energy in the provinces.

In the middle of the eleventh century, moreover, the feudal system was much less advanced and less compact in England than on the Continent.

These differences have operated more tardily on the political destinies of England. Still, it is doubtful whether they would have been sufficient to overcome the causes which were already exhibiting themselves in the empire, and which, there as elsewhere, were tending to work the ruin of national and free institutions, and to destroy the political life of the country, first throwing it into anarchy and then subjecting it to the yoke of an aristocratic hierarchy more or less like the Frankish land proprietors. But the Norman Conquest came in time to arrest this tendency, and to introduce among the Saxons, together with the evils of the feudal system and a foreign yoke, the renascence of national and free institutions, the preservation of which was then the sole chance of protection for the conquered against the conquerors.

Now this is a feature of the new era which deserves a little closer investigation. The first point to notice is that what happened in England after the Norman invasion was social oppression, not social dissolution.

Before that event the new comers had established among themselves a social organisation, coarse, no doubt, but still a regulated one. The organisation of the feudal system had become strong and complete in Normandy.

The relations of the duke with his vassals, the general council of the barons, the seigniorial justices, the superior court of the duke, all the elements, all the means, of feudal action were fixed and strong.

In a great and powerful state this system is impracticable. It carries with it necessarily the dislocation of the people and of power.

In a limited state like that of Normandy, and in the midst of semi-barbarous customs, it might exist without absolutely destroying order and unity.

In spite of the wars of the Dukes of Normandy with some of their vassals, William was in reality the powerful chief of the Norman aristocracy. The very enterprise in which he led them on proves this.

It was not the effacement of a people, or a mere immigration of barbarians, but an actual conquest accomplished by a sovereign at the head of the knights of his nation without renouncing his own established dukedom.

No expedition, except perhaps those of Charlemagne, had been carried out with such completeness. After the conquest and the settlement of the incomers, the bonds of the Norman feudal aristocracy could not fail to be tightened.

Encamped in the midst of a hostile population, jealous of its own independence and capable of offering a strong resistance to attacks upon it, the Norman aristocracy was compelled to hold together in firm union.

In Gaul the Franks were able to spread over the country in small bands, isolated from one another and from their king. On the Continent we scarcely ever come across any insurrection of the old inhabitants against their new masters. The warfare and fighting are almost always between the conquerors themselves.

In England they were between the conquerors and the conquered. In spite of war, defections, and some scattered revolts, the Norman barons and their king work together, support one another, and march together with one common object. The cohesion of the feudal confederation and the vigour of the central power were matters of actual necessity for them.

Thus everything went on, either among themselves or in their strife with the conquered people, with a system and a regularity hitherto unknown.

The spoliation of the Saxon proprietors was not, as has been sometimes assumed, either systematic or universal. It took place gradually and unequally, in proportion to the cause or pretext for confiscation for which the revolt offered opportunity.

But the partition of the lands among the conquerors, and the distribution of the royal domains under the title of "fiefs," was not the consequence of individual or chance acts of violence, nor the result of a long state of anarchy.

William proceeded in his work by general measures, with skill, and in a manner that produced the assurance of the empire of the Normans over the Saxons, and of the royal power over the Normans.

Nearly six hundred immediate vassals swore fidelity

and homage to him, and, in order to prevent any independence on the part of those whom he most enriched, he took care to disperse them in their domains throughout the different counties of the kingdom.

The territory was divided into sixty thousand one hundred and fifteen knight's fees, whose owners swore, all of them, fealty to the king.

Finally, the Domesday book, that true statistical account of the fiefs and their possessors, which was commenced by William's orders in A.D. 1081, and completed in A.D. 1086, attests, even to the present day, the regularity and cohesion with which the Norman aristocracy was established in England twenty years after its first settlement.

The same causes and the same necessity must have produced analogous effects among the Saxons. The spirit of nationality, which was lost for a time in the anarchy that prevailed prior to the Conquest, was stirred again into life in consequence of the force exerted by the weight of the foreign oppression. It gave the whole people one common interest, one common sentiment, and one common design.

Nothing like this could possibly have happened in Gaul, for there all moral life was extinguished among the different sets of people, and the state of disorder was too great.

In England the state of disorder was less; the population was strong and fierce. The Normans had found in the feudal organization established in Normandy their means of rallying together. The Saxons looked for those means in their ancient institutions and their old laws.

William's firm settlement in his new acquisition was not (in form at least) entirely the result of force. After the battle of Hastings the throne was offered to him in the name of the Saxons, and immediately on his coronation at Westminster he took the oath to govern the two sets of people under equal laws.

From that time we see the Saxons incessantly claiming as their special right that which was necessarily dear to them, viz., the Saxon laws, the laws of Edward the Confessor. This right they obtained by frequent insistence from the Norman kings.

When they were sufficiently strong to extract from these kings promises and guarantees, they defended or renewed their rights by virtue of titles anterior to the Conquest, and these titles were recognised.

Thus, whilst on the Continent conquest had dissolved the two sets of people, in England it stirred them up into opposition each against the other, leaving their ultimate amalgamation to be the work of time.

On the Continent the political system and the laws of the conquered had perished. In England the political institutions of the conquered were reanimated, and became dearer than ever to them.

On the Continent every interest, every kind of force, and every design had become little else than individual. In England, among both sets, force, design, and interest were all national.

On the Continent the feudal regulations sprung out of the ruins of central power, of political unity. In England, on the contrary, feudal rule served to maintain both power and unity.

The Saxons continued to subsist as a national body, claiming or defending their liberties under the shelter and protection of their old laws.

Finally, in England the Conquest, instead of scattering everything, or of confounding everything, brought two great bodies face to face, resolute up to a certain point, and determined (at least at the commencement of the period) the one to assert their rule, the other to resist it. For both of them common deliberation and common action were a necessity.

Under these conditions, then, the principle of free government was started into life.

How it attained a larger growth, in spite of the miserable disorders and evils of the times, is another interesting question.

The investigation of this problem leads us to the consideration of two political and constitutional institutions. One of these is the Great Council (whose history extends from the time of William the Conqueror to that of King John, *i.e.*, from A.D. 1066 to A.D. 1190); the other is that of the Anglo-Norman royalty.

In examining into the history of the Great National Council of the early Norman period, so far as the pages of the chroniclers and the documentary records of the period are concerned, we come across a number of terms, which apparently refer to the assembly that after the Conquest took part in the government of the nation. These terms are as follows: "*curia de more*," or customary court; "*curia regis*," "*concilium*," "*magnum concilium regni*."

The terms themselves are somewhat vague, and throw

little light on the origin, the nature, and the powers of the assembly which they designate; and so they have served as texts for surmise and hypothesis of varying character, and have been appealed to in support of their several views by the different writers who have attempted to construct a theory from them.

Hale sees in them "a parliament as complete and real as has ever been held in England."<sup>1</sup> Carte and Brady, on the other hand, recognise them only as indicating tribunals, private councils, dependent on the King, or pompous assemblies convoked solely on the occasion of certain solemnities.

According to Tory writers (says Guizot), and specially according to "a report from the Lords Committee appointed to search the Journals of the House, Rolls of Parliament, and other Records and Documents for all matters touching the dignity of a peer of the realm,"<sup>2</sup> the terms "*curia de more*," "*curia regis*," and "*concilium*" on the one hand, and the terms "*magnum*" or "*commune concilium*" on the other, designate different kinds of assemblies.

The last two terms, it is said, may be applied to assemblies of a large and solemn character. But the term *concilium* is to be restricted to a private council composed of men selected by the king to assist him in the government. This council, it is added, was at the same time a "*curia regis*," that is, a tribunal deciding judicially

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<sup>1</sup> "History of the Common Law of England," by Sir M. Hale (edition 1820), p. 135.

<sup>2</sup> At page 20.

in all questions referred to the Crown, and presided over by the king, or, in his absence, the great justiciary. It was also called "*curia de more*" because it was summoned, according to ancient custom, three times a year, at the feasts of Easter, Whitsuntide, and Christmas. It was regularly adjourned from each one of these periods to the other.

According to Whig writers, these terms marked originally, and up to the time of Henry II., the general assembly of the great men of the kingdom, which was necessarily assembled near the king to judge, to enact laws, and to assist in the government of the country.

The first view (that of the Lords Committee), in M. Guizot's opinion, places too narrow a construction on these terms. The second attributes to isolated facts too extensive and too important a meaning.

"When the king was in England," says the old Saxon Chronicle, "he wore his Crown three times a year; for the feast of Easter, at Winchester; for that of Whitsuntide, at Westminster; and for that of Christmas, at Gloucester. There were with him all the great men of England, archbishops, bishops, abbots, and earls, thanes and knights."<sup>1</sup> "By the royal edict," says William of Malmesbury, "there were convoked to the '*curia de more*' all the great men of whatever condition, in order that the envoys from foreign countries might admire the splendours of that assembled throng, and the pomp of its feasts."<sup>2</sup>

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<sup>1</sup> "The Anglo-Saxon Chronicle" (Bohn's edition), p. 461, Anno 1087.

<sup>2</sup> William of Malmesbury, "*Gesta Regum*," iii. § 279.

A crowd of texts show that the term "*curia regis*," which was at first employed to designate the place of the royal residence, was then extended to mean the assemblies of a special solemnity, and of a specially large character, not mere private councils, nor tribunals composed only of royal officials.

They were public assemblies, to which the great men of the kingdom came for the purpose of marking more emphatically the splendour of the royal State, of discussing national affairs, and of administering justice in concert with the king.

But then comes the question, Who were these great men? Who were the personages to whom was conceded the right of attending these gatherings?

It is difficult to find any clear and precise information on this point in the language of the historians or in the charters. There are so many expressions employed, and such varying ones, in relation to them; for instance, these, "*magnates*," "*proceres*," "*barones*," "*milites servientes*," "*liberi homines*," etc.

The best solution of the question must be sought in the feudal principle; that is to say, we must understand the term "*great men*" thus summoned to these solemn assemblies to mean all the immediate vassals of the king who owed him rent and service at his court as well as in war.

Yet when we remember the fact that this class of vassals numbered more than six hundred, it is somewhat puzzling to understand how so large a body could have met together on all occasions.

But here we must bear in mind that a large number

of them would be much more inclined to remain in their own domains, where their constant presence was demanded owing to the troubles of the times, than to busy themselves about State affairs.

To leave home three times a year for the general national council would be looked upon as a very annoying duty, quite outbalancing the privilege of being present at the great council. Doubtless, therefore, a large number never troubled themselves to attend.

Now those who did obey the summons and take part in the government of the country are generally described by the title "Barons." Probably this name was originally common to all the immediate vassals of the Crown who were in allegiance to the king per "*servitium militare*," *i.e.*, by knight service.

By degrees this knight service became restricted in its extent, and was applied almost exclusively to the vassals of the Crown who were sufficiently powerful and sufficiently rich to obtain the privilege of a court of justice on their own manors or on their own baronies.

There are clear indications that knight service became still more restricted, and ceased to belong to any but such immediate vassals as the king believed he was bound to summon personally to the general assembly. It will be seen that such was in effect the meaning of the term baron at the period of the concession of the Great Charter.

No fixed or positive rule distinguished these barons at first from the other immediate vassals. Their pre-eminence, and the consequences resulting from it, were of a special and variable nature for a very long time prior to

their formation into a class distinguished by permanency of title and of right.

The bishops and a large number of the priors and abbots attended the general assembly, either as the chief personages in the clerical body, or as immediate vassals of the king or of the barons.

There is no trace of election or of deputation even on the part of those of the immediate vassals who preferred to remain on their own estates, or on the part of the towns and boroughs.

As for the exact range and object of these assemblies, it is useless to look for information. What, if any, were their separate duties, or what the limits within which they were fixed, is a matter not easy, if possible, to decide.

Methodized arrangement of this kind is the creation of modern times. In those early days division of work and methodized arrangements were unknown. Urgency, pressure of fact, or necessity were the reasons for deliberation or action.

The "General Council of the Barons" was engaged on whatever work came to hand at the time, or whatever matter required immediate settlement. Legislation, ecclesiastical affairs, questions of peace and war, nomination to great public offices, extraordinary taxes, succession to the Crown, the administration of justice, the domestic affairs of the king, his marriage or that of his children, the dissensions in the royal family,—in a word, all the interests of the State on those occasions when the king did not believe himself to be strong enough to regulate affairs without the advice of his principal subjects, or when his conduct stirred complaints sufficiently strong

and sufficiently general to force him to take notice of them, were discussed and arranged.

Nor were the sessions of these great councils more regular than their influence. One set of English writers has maintained that these assemblies were very rare, for they were averse to the notion that the "*curia de more*" and the "*curia regis*" should be looked upon as independent political assemblies. Here they are wrong, for from the Conquest down to the reign of John we meet with frequent instances of them in every reign.

In opposition to that contention, another set of writers has laid too much store by, and dwelt with too much pride on, the three annual periods of assembly.

According to this class it would appear that the great men of the kingdom were assembled three times a year to exercise control over and to direct the king's government.

But as a fact the progress of public liberty at this time was neither so vigorous nor so advanced as to warrant the belief that such control or such direction could be claimed or would be conceded.

The greater part of these assemblies were either small in number, or simply devoted to festivity, for the purpose of adding splendour to the throne, as William of Malmesbury points out.<sup>1</sup>

To be seen in the midst of a crowd of vassals enhanced the dignity and power of the king, as it did that of every baron in his own domains.

Frequently too, in obedience to the royal summons, the

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<sup>1</sup> See the passage above noted.

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attendance of the vassals was given, not so much for the purpose of carrying out some political object, or of taking part in some common discussion on the affairs of the State, as for the gratification of a desire for social amusement and indulgence in the pleasures of a brilliant courtly display.

## LECTURE XX.

### NORMAN ENGLAND.

Anglo-Norman Royalty—Different Condition of Anglo-Norman and French Royalty—Position and Power of William the Conqueror—Anglo-Norman Feudalism and French Feudalism Contrasted—The Anglo-Norman Barons—William's Oath of Fealty—His Domesday Survey—The Oath of Fealty—Meaning of the Term "Fidelis"—Oaths of Homage and Fealty from Littleton—The Domesday Survey Characterized by Professor Freeman and by the Author of the "Dialogus de Scaccario"—Some of its Special Features—English Agriculture at the time of the Survey.

#### *The Anglo-Norman Royalty.*

IN one of my former lectures I gave an account of the position of royalty in France during the barbarian period. I showed how that state of royalty was replaced on the fall of the Carlovingians by feudal royalty, and that this was at first a mere title, requiring the work of centuries ere it was fashioned into substantial power.

Feudalism, that ill-regulated and disunited confederation of isolated and independent sovereigns, was moulded into shape by itself, and was in full existence when a royal head of its own quality came to be placed above it.

In England the order of things was entirely different. There feudalism and royalty were brought into life together, each contemporaneous with and necessary to the other.

It may be asserted that in England feudal royalty was in full strength at its very birth, and there was no need for either feudalism or the crown to strive for the conquest of one over the other, as had been the case on the Continent.

Almost ere he was crowned, William was what the kings of France had become only after long efforts, a real king, recognised as such by all his barons, and much more powerful than any of them.

He obtained for himself, and it may be presumed without trouble, a large share of the profits of the Conquest. His domains comprised fourteen hundred and sixty-two estates in land or manors, as well as the principal towns of the kingdom. The impositions exacted from the Saxon rebels constantly swelled these possessions. Throughout the length and breadth of them he imposed taxes at his will, and by the same arbitrary means established custom dues on the importation and exportation of merchandise. Fines, penalties for crimes, the sale of public offices, as well as of the royal protection and justice, were the source of considerable revenue, whereby an extraordinary and independent power was assured to the king.<sup>1</sup>

His relations with his vassals were regulated from the very outset in methods more general and by plans more direct than had been known or heard of in any other quarter.

They owed him military service for forty days should he so will it. They were also liable to pecuniary aid

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<sup>1</sup> See "Ordericus Vitalis," lib. iv. c. 7.

in three cases: first, for his ransom if he were made a prisoner; secondly, for the marriage of his eldest daughter; and thirdly, for the arming of his eldest son when knighted.

The specific amount of these aids was not fixed by law until the reign of Edward I.

Moreover, the king claimed to exercise over his vassals the rights of (1) relief, to be paid by the heir on attaining his majority, in return for the privilege conceded to each baron of possession of his fief; (2) of wardship, that is, the heir's right to enjoy the fief during his minority; (3) of marriage, that is, the right of selling in some sort of form to the very best bidder the hand of the female heir of a fief of whom the king was the guardian.

All these rights, and others less important, were undefined; they depended on the will of the stronger. They afforded opportunities for force to assert its power, and in the event of contest or suit between the Norman kings and their vassals, there was very little doubt as to which side would be the winner. The vassals power of resistance for any length of time was a very slight one.

Hence it happened that in their claim to these rights, William and his successors were perfectly able to enforce obedience against all their vassals. They continued, too, to levy at their will those charges on all imports that had been levied of old by the Saxon kings, among them being the Danegelt, a tax that lasted even to the reign of Henry II.<sup>1</sup>

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<sup>1</sup> First imposed in Ethelred's time, between A.D. 988 and 1007. Whether it was imposed immediately after the treaty of peace be-

In due course of time another source of revenue was found, in what was known as *escuage*, or a payment imposed on all who wished to escape from military service.

This tax, which was looked upon as a compensation due to the king, was also an arbitrary one, and was regarded as a revenue to which the king had an undoubted right.

By means of these sources of income, and these arbitrary taxes, the Norman kings were able to keep up a permanent body of mercenaries, and that long before their brother kings on the Continent had been able to establish a similar force.

Here then we find the existence of a feudal society entirely different from anything in France.

In every country the primary interest, an instinct as it were, is that of self-preservation and common defence.

But this interest is necessarily at variance with any condition of isolation and individual independence on the part of the king's vassals.

In England this instinctive feeling of common interest was never lost sight of; nay, was always present. Hence we see a reason why these vassals so frequently obeyed

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tween the Saxon king and the three Norwegian leaders, Anlaf, Olaf, and Guthmund, consequent on the battle of Maldon, is not quite clear. See Lappenberg, vol. ii. ch. x. p. 191 (Bohn's edition). "The ship levy and the danegelt," says Green, "were the first beginnings of taxation" (Green's "Conquest of England," p. 405); as to the danegelt, see "The Dialogus de Scaccario," I. part iv. § xi.; "Documents Illustrative of English History," W. Stubbs, M.A., pp. 194-198.

the king's summons, and hence too we can understand how it is that in England the central power, which across the Channel was almost extinguished, continued to be a real force, exerting its influence through the king and the general assembly of the barons working together in united action.

An examination into the history of the times under review shows us, as I have before noticed, the part which this assembly played in the administration of public affairs.

As I have pointed out, it met and fulfilled its duties, not by virtue of any special delegation of separate and distinct lines of work, nor with the view of exercising any particular or special office, such as the enactment of laws or the voting of supplies, but simply for the purpose of discussing and providing for any measures or subjects that from time to time were urgent.

In fact its business was that of assisting in the government of the country. The laws, foreign affairs, peace and war, ecclesiastical matters, judgments in great causes, nomination to great public offices, all were within its scope; nothing was outside its deliberations; everything was remitted to its order; no right or rights were withdrawn from its review and decision. Its surveillance over the whole administration of the State was direct and general, its action was decisive.

On the other hand, if we turn our attention from the assembly or council to look at the crown, standing by itself, apart from any controlling influence, we find it possessed of sufficient strength to exert its power on a thousand occasions in a manner as arbitrary and as abso-

lute as though no political assembly had ever existed, or any politically constituted nation had ever intervened in the government of the country.

The king was himself richer and more powerful than any of his vassals. He could of his own will make laws, levy taxes, dispossess proprietors, condemn or banish unfortunate men,—exercise, in short, on many occasions all the rights of an unlimited sovereignty.

This sovereignty appears to reside sometimes in the hands of the national assembly in union with its chief, sometimes in those of the chief himself.

In feudal France no assembly of vassals of the crown acquired so real and so frequent a share in the affairs of the State. But then in France the power of the kings throughout the length and breadth of the kingdom never had the opportunity or means of becoming so tyrannical or so dreaded.

One result of this state of things was the existence in England of two social agencies, two public powers, which at the same period of time are nowhere noticeable in France. I mean, an aristocracy and a king; agencies or forces too rough and unpolished, and too much subject to the sway of individual purposes and personal interests, to allow of their co-existence without producing alternatives of despotism and free government. Yet it fell out that each of them was necessary to the other, and both of them were often forced into common action.

The sway of Hugh Capet, Henry I., Philip I., was limited to their own domains. Every lord of less exalted station was in his own domains almost as powerful and almost as isolated as the king.

But the Norman barons formed a compact body. The Norman kings were really the chiefs of this body, and thereby the rulers of the country.

It was the necessity under which they lay of defending themselves in common against a people capable of offering resistance to them that brought about this double result.

When this necessity became less pressing, and when the conquest was somewhat settled, the ambition of individuals began to exhibit itself, and then the true nature of feudalism allowed itself to be seen.

Every possessor of a fief wished to live a life of isolation in his own territory, to enlarge his holdings by violence, and to enrich himself by brigandage.

The kings took advantage of this commencement of dissolution in order to exercise their power. Invested with strength superior to any other individual, and called by their very title and by the eminence of their position to look to the preservation of public order, like the continental kings they soon came into conflict with their barons, at first gaining great advantage.

If Henry I. and Henry II. cannot be called absolute sovereigns, yet they exercised an authority more general and more indisputable than any other contemporary king.

But the causes of this extension of authority were transient. The barons, less alarmed at the perils to which the revolts of the Saxon population might expose them, being in a more assured possession of their share of the Conquest, were not so vividly impressed with the necessity of rallying round the king.

Their intervention in the central government perforce

became less active, and the summons of these assemblies less frequent. Still they had not lost either the memory or the habit of these assemblies.

When after their separation from the royal power they saw themselves attacked by it, when they recognised the fact that they were unable to offer any individual resistance to it, the spirit of combination recovered strength, and instead of living apart in a feudal hierarchy, in order to offer a successful defence they formed coalitions that were in truth and in fact aristocratic.

General circumstances favoured this new development. Three usurpers in less than fifty years—William Rufus, Henry I., and Stephen—owed the recognition of their claim to the crown to the body of the barons, and were obliged to obtain their goodwill by general promises in favour of their protection and liberty.

On his departure for the crusades, Richard Cœur de Lion entrusted the government to Hugh, Bishop of Durham, and William Longchamp, Bishop of Ely.

Longchamp's tyrannical administration provoked such disturbances that the king was compelled to associate with Longchamp, the Archbishop of Rouen, and four barons.

Owing to this, and to the efforts of Prince John to seduce the people from their allegiance to Richard factions of various kinds were formed.

In the midst of these disorders, increased by the enforced absence of the king, the government of the country fell into the hands of a council of barons, that is to say, of a portion of the aristocracy.

One set assumed the right of acting as governors of

the country. Another set formed an opposition to a government which was and were only one of their own peers.

And so, when John mounted the throne in A.D. 1199, a change had come over everything. The strife was no longer one between Normans and Saxons. The amalgamation of the two sets of people had as yet not been completed. Still, it had begun.

The resistance of the barons to the king was no longer of an individual character affected by feudal isolation. Royalty and aristocracy were at issue: the former striving to retain that absolute power which it had reached for a short time under cover of the original disorders of feudalism; the members of the latter rallying together for the purpose of obtaining a recognition of their rights and the assurance of their guarantees.

Some barons adhered to the side of the king; for without their help the contest would have been a useless one.

Still, the strife had commenced, and ceased to be what it was on the Continent, a series of combats between individual interests. It was a contest of a truly public character, between two bodies independent and capable of imposing each on the other the necessity of examining into and settling the matters in dispute between them.

Two very important consequences on the condition of English life directly attributable to the Norman Conquest remain to be told.

The one is the introduction of the oath of fealty imposed by the conqueror on all his subjects; the other is the great survey of the country, commonly known as the Domesday survey.

By the first the whole system of territorial proprietorship was revolutionised. The land, which was practically the land of King Edward, became *terra regis*, the land of King William.<sup>1</sup> The old Saxon institution, folc-land, falling into disuse, gave place to the principle as well as the name, *terra regis*, or crown land; and, eventually, instead of absolute ownership of land, the doctrine of tenure was introduced.

Moreover, through fealty, a strong step was made towards feudalism, and with feudalism all its burdens in time became forced on the inhabitants of England.

It is true, as Professor Freeman has pointed out,<sup>2</sup> that this introduction of feudalism into England is not due to any direct legislation or authoritative ordinance on the part of William. Still, it is from William that feudal ideas received a strong impulse. "Under William they were in the germ, as they had been long before him, and in the next reign they were stiffened into established custom." But William took care that the king of England should be something more than a mere feudal lord. He saw to it that his own vassals, and the vassals of his vassals, should be his subjects also."

"The oath," says the learned author above referred to, "which all his men took at the great gemot at Salis-

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<sup>1</sup> It seems to be a necessary inference from the evidence of Domesday book, that all England had been converted into "boc-land" before the Conquest, with the exception of the *terra regis* ("William the Conqueror," by E. A. Freeman, D.C.L. LL.D., Regius Professor of Modern History in the University of Oxford, Macmillan & Co., 1888, ch. ix. p. 132).

<sup>2</sup> "William the Conqueror," ch. ix. pp. 132, 133.

bury saved us from the worst evils of feudalism as they showed themselves in other lands."

His was no chieftainship over a weak central government striving to maintain authority in a divided land. He ruled as the absolute head of a strong central government, and the realm that owned his sway was an united one.

The way in which the revolution in the matter of landed property was worked deserves explanation.

It turned upon the introduction of one word in the oath of submission and loyalty imposed by William and accepted by his subjects. That word is "*fidelis*."

The second paragraph of the *Intimatio* runs thus in the original Latin: "*Statuimus ut omnis liber homo fœdere<sup>1</sup> et sacramento affirmet quod infra et extra Angliam Willelmo regi fideles esse volunt terras et honorem illius omni fidelitate cum eo servare et ante eum contra inimicos defendere.*" "We enact that every freeman by compact and oath affirm that he is willing to be *fidelis* to King William (and so) preserve his lands and honour (*i.e.*, all his rights and claims), and especially to defend him against his enemies."

As to this injunction of being *fidelis* to the king, there are three things to be noted: (1) This is not an ordinary declaration of faith and allegiance. (2) The important word *fidelis* is not one that had been in use in Saxon times; it was introduced from the Continental feudal

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<sup>1</sup> Wright, in his book on tenures, comments thus on this word "*fœdere*": "That homage was the *fœdus* (*l'alliance*) is probable from its ancient form in the *Contumes de Normandie*, "*Je deveigne votre home.*"

terminology. (3) The enactment itself is not a mere confirmation to the king of his own lands and rights.

In all probability the Saxon portion of the king's subjects thought that by complying with the enactment and taking the oath prescribed, they were doing no more than swearing to submit and be faithful to William as their lord and king; but those who penned the law, and the king himself, had deeper views.<sup>1</sup>

Fidelis, at the time of the Conquest, was a well-known word of art among the feudists, and carried with it a much more extended signification than the Roman equivalent, faithful.

A "fidelis" was a subject, a vassal bound by oath to his lord, and in this sense it is frequently to be found in the old Lombard and Frankish laws. As Craig (in his treatise "De Jure Feudorum") points out, the word in its feudal bearing is not restricted to the meaning of a man whose faith is good and undoubted, but it is used to define vassals who possess fiefs in any particular territory or jurisdiction.

Therefore, by taking the oath of fealty—first, the men of England became King William's men; and, secondly, by this change the character of landed property was *at once* altered. All the land was converted into the king's land, and all the old owners ceased to be Saxon proprietors. They became feudal vassals and tenants, that is, holders of the land. Thus the idea of tenure was introduced, and with it in time followed the variations that formed so complicated a part of the English laws

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<sup>1</sup> See Reeve's "History of the English Law," vol. i. ch. ii. p. 35.

as exhibited in the pages of Bracton, Brittan, Fleta, and Littleton.

Moreover, consequent upon the notion of tenure, and the form of the oath of fealty, came the doctrine of services, among them knight's service and tenure in socage; but these were the results of later legislation than that of William's time.

As the oaths of homage and fealty are somewhat remarkable, I give them out of Littleton's treatise. They had been handed down to his time from a much earlier date. Probably that of homage differed very little from that in use in William's reign,—in essence, at all events, though perhaps the form was polished by some later jurist, such as Glanvil, for example.

Littleton, who wrote in the reign of Henry VI. or Edward IV., gives us the following:—

“The way in which homage was done was this. When the tenant shall make homage to his lord, he shall be ungirt and his head uncovered; and his lord shall sit, and the tenant shall kneel before him on both his knees, and hold his hands jointly together between the hands of his lord, and shall say thus: ‘I become your man from this day forward, of life and limb, and of earthly worship; and unto you shall be true and faithful, and beare to you faith for the tenements that I claim to hold of you.’”

In a note upon this section of Littleton's handbook, Hale says, “that in ancient times—that is, those long prior to Littleton's day—by *hommes*, or men ‘homagers,’ whom we *now* call freeholders were intended.”

From this, as well as from the use of the word freeholder by Littleton himself in the following description

of the oath of fealty, one may draw the conclusion that this form of oath was of later date than the so-called oath of fealty of William's time, which was in effect an oath of homage; first, because it was one that every *liber homo* had to take, who then became the king's man and *fidelis* to him; and next, because the term freeholder was not known at that date.

I give the oath of fealty as it is recorded in Littleton's treatise:—

“When a freeholder doth fealty to his lord, he shall hold his right hand upon a boke, and shall thus say: ‘Know ye this, my lord, that I shall be faithful and true unto you, and faith to you shall beare for the lands which I claim to hold of you; and that I shall lawfully do to you the customes and services which I ought to do at the terms assigned, so help me God and his saints.’ And he shall kiss the boke; but he shall not kneel when he maketh his fealty, nor shall make such humble reverence as aforesaid in homage.”<sup>1</sup>

Domesday survey, of which I am now about to speak, marks more emphatically than any other act or deed of this period the character of the man by whom it was devised and under whose orders it was carried out.

The nature and plan of the work, its design and extent, the immediate results consequent upon it, its ultimate effect upon the country, and the impress of William's genius visible throughout it, have been described and noted in the ablest manner by those English authors who have devoted their time and labour in the

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<sup>1</sup> “Littleton's Tenures,” book ii. chs. i. and ii.

most beneficial manner to the history of England at the date of the Conquest.

In Ellis's "Introduction to Domesday," in Hallam's "History of the Middle Ages," in Palgrave's "History of the Commonwealth," in Freeman's "History of the Norman Conquest," in Stubbs' "History of the Constitution," and in Pearson's "History of England," the student will find a large amount of information on the Domesday survey and on Domesday book that will well repay any amount of time and labour he may give to their pages.

The subject is one that deserves his careful attention and careful study; for in Domesday he will find ample information respecting the Anglo-Saxon and Norman Constitution.

There he will read of the rights and services of the kings, their subjects, and their vassals. There he will find notices of families and of the landed members of the country. There he will see the condition of many parts of England at the time of the survey. There he will see how the king's revenue was to be secured, and how justice was to be administered.

In short, he will obtain from Domesday an accurate account of every portion of the Conqueror's dominion.

"Never," says Professor Freeman, "was there a dry record so full of human interest of every kind as in the great survey of England. Every human relation, every portion of life, every circumstance which could call forth joy or sorrow,—the wail of the distressed, the overbearing greed of the intruder, the domestic details of courtship, marriage, dowry, inheritance, bequest, and burial, are all there.

“ Quidquid agunt homines, votum, timor, ira voluptas,  
Gaudia, discursus, nostri est farrago libelli.”

One hundred years or thereabouts after the survey, the istorian of the Exchequer, Richard, Bishop of London, writes thus about it<sup>2</sup>:—

“ When that great conqueror<sup>3</sup> of England, King William, extended his power to the farthest limits of the island, and tamed the inclinations of any rebellious member thereof by terrible punishments, he gave his subjects (the advantage) of positive jurisprudence and written law. Then he sent his own officials, the most discreet men of the country, throughout the circuit of the realm. By them was made a careful description of all the land in every part of it, woods, pastures, and meadows. They noticed also its agricultural condition; and what they saw they reduced to writing and recorded, the object intended being that every one should know what his own rights were, and should not be allowed to interfere with those of his neighbour. Then, too, was made an accurate survey through the counties, the hundreds, and the hides. All this was noted as being done in the king's name, and then were appended the names of the king's tenants in capite, in their proper order and quality. Further, all that was recorded was numbered in due sequence, for the purpose of readier reference. The book itself is called ‘Domesdei,’ by way

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<sup>1</sup> Freeman's “History of the Norman Conquest,” vol. v. ch. xxii. p. 44.

<sup>2</sup> “Dialogus de Scaccario,” lib. i. ch. xvi.

<sup>3</sup> *Subactor* is the term used.

of metaphor as it were ; that is to say, as from the judgment on that last and terrible day there can be no escape by fraud or cunning, so here, should any dispute arise in respect of the matters contained in the book, appeal thereto must be final and indisputable. For this reason we have named it the book of dooms (judgments), not because upon every doubtful question that may arise a decision is to be found in it, but because that which is recorded in it is final and irreversible."

Domesday book professes to give an accurate account of all portions of the realm, yet the northern counties—Northumberland, Lancaster, Cumberland, Westmoreland, and Durham—are not included in its pages, possibly by reason of their desolate condition.<sup>1</sup> Nor are London, Winchester, and some other cities of importance, to be found in it, probably because full information regarding them, so far as the interests of the king are concerned, was already to hand for the king's use in the royal chancery or treasury.

To the above account of the Domesday book I add some few words upon the method of procedure by which it was effected.

That was as follows. Commissioners were appointed to make a census of population and property. They were directed to summon before them the sheriffs, the lords of manors, the parish priests, the hundred reeves, the bailiffs, and six villeins out of every hamlet.

These men had to state on oath what amount of land

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<sup>1</sup> Some of the southern tracts of these counties are included in Cheshire and Yorkshire.

there was in the district, whether it was wood, meadow, or pasture; what was its value; what services were due from its owners; and generally the number of free and bond on the estate.

In some instances other particulars were inserted, such as the amount of live stock. As to this, the transcribers exercised their own discretion about the insertion or omission of the details.

One special purpose did the Domesday book serve. It gave the king a new military organization; it enabled him to collect a revenue by means of taxation and fines; and it presented a residing and constant basis for such taxation.

Another feature of peculiar interest, as exhibited in Domesday, deserves a somewhat extended notice. We gain from it something like an approximation to accuracy regarding the numbers of the population of England at the date in question—viz., A.D. 1086—and we see how the different classes of society of that population were distributed.

As to these two heads of statistical information about England of A.D. 1086, I would say a few words.

Allowing for deductions consequent on the exclusion of the counties and cities I have above mentioned, and allowing also for all omissions, the actual population of the counties may be placed at one million eight hundred thousand.

What is remarkable, when we think of our present numbers and the enormous increase to our population during the last eighty or one hundred years, is this, that these figures above stated were not doubled till the reign of Charles II., six hundred years later.

Now of this population of the year A.D. 1086 we find about two thousand persons who held immediately of the king, or who were attached to the king's person, or who had no holding, but were free to serve as they would.

Of the second class, the free upon bond land, there were more than fifty thousand—under tenants, or vavassors, burghers, soc-men, freemen, holding by military service, or degraded into tenants for the purpose of obtaining protection; and ecclesiastics.

The third class, or semi-servile, numbered about two hundred thousand in all—villeins, bordars, or cottiers.

They were bond upon bond-land; that is, their land owed a certain tribute to its owner, and they themselves owed certain services to the land. They could not quit it without permission from their lord, but they were not mere property; they could not be sold off the soil into the service of a different kind, as could the fourth class, or slaves, whose number, roughly estimated, stands at about twenty-five thousand.

Mr. Pearson, whose figures I have been quoting,<sup>1</sup> notes an inference that in his opinion may fairly be drawn from the large number of the middle-class and the small number of slaves exhibited in this survey. It is this, that the Conquest did not introduce any new refinement into servitude. On the contrary, we may well believe that in the matter of freedom it was a gain to all classes below the highest.

As he points out, in Essex the number of freemen

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<sup>1</sup> "History of England," vol. i. ch. xxiii. pp. 376-378; and see the authorities referred to by him in the notes.

positively increased, a change probably to be ascribed to the growing wool trade in Flanders, for we find sheep multiplying on the great estates, and with the change from arable to pasture land few labourers (*i.e.* few bondmen) would be required.<sup>1</sup>

One thing Domesday book exhibits so far as the country districts of England are concerned, and that is the low condition of English agriculture in the eleventh century.

I quote from Hallam's "Middle Ages": "Though almost all England had been partially cultivated, and we find nearly the same manors, except in the north, which exist at present, yet the value and extent of cultivated ground are inconceivably small.

"With every allowance for the inaccuracies and partialities of those by whom that famous work was completed, we are lost in amazement at the constant recurrence of two or three carrucates in demesne, with other lands occupied by ten or a dozen villeins, valued altogether at forty shillings, as the return of a manor which would now yield a competent income to a gentleman.

"If Domesday book can be considered as even approaching to accuracy in respect of these estimates, agriculture must certainly have made a very material progress in the four succeeding centuries.

"Higden, a writer (temp. Richard II.), says in reference to the number of hides and vills in England at the Conquest, that by clearing of woods and ploughing up

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<sup>1</sup> Pearson's "History of England," ch. xxiii. pp. 378, 379. See also as to the social gains in England from William's legislation, Freeman's "Norman Conquest," vol. iv. ch. xix. pp. 325, 326, and pp. 395-401.

wastes there were many more of each in his age than formerly."

One great and lasting benefit resulted from the Domesday survey, to wit, that much lawless aggression of the Normans was undone, and a good deal of property reverted to its original owners.

The great bulk of the tenants-in-chief who acquiesced, however unwillingly, in their new settlement, renewed their oaths of homage to the king at Salisbury (August 1, 1086); and so from that day forward Domesday book was the record and voucher of titles throughout England. "Without parallel," says Mr. Pearson, "as without precedent, it has no doubt exercised a silent influence over our constitutional progress by the character of permanency it impressed upon all property and tenures."<sup>1</sup>

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<sup>1</sup> "Europe During the Middle Ages," vol. iii. ch. ix. part ii. p. 361. Tenth edition, 1853.

<sup>2</sup> See as to Domesday book, its characteristic features and its true value upon this period of English History, Sir F. Palgrave's "History of the English Commonwealth," and Freeman's "Norman Conquest," vol. v. ch. xxii.

## LECTURE XXI.

### *EXTRACTS FROM DOMESDAY.*

The Inquest of Ely—The Customs of Chester—The Customs of Lincoln—The Customs of Oxford and Oxfordshire—The Customs of Berkshire—The Changes in the Institutions of England after the Conquest.

IN my last lecture I gave an account of the Domesday survey, and I endeavoured to lay before you its characteristic features, the immediate consequences that resulted from it, and the ultimate effect it had upon the social and political life of England.

I think you will understand the real nature of this great undertaking better if I give some specimens of the work itself, bearing in mind that "next to the laws and charters of the early kings, the record of local customs in Domesday book is the source of the most certain information as to the common law of England before the Conquest."<sup>1</sup>

I shall confine myself to the extracts set out by the learned author just referred to in the treatise from which I was quoting, and that for the special reasons he has there given.

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<sup>1</sup> "Documents Illustrative of English History," by W. Stubbs, M.A., part iii. p. 82.

As Bishop Stubbs points out, these extracts show the aristocratic character of the municipal government in the towns; the financial system of the counties previous to its organization under the Court of Exchequer; the financial and legal customary settlement ("consuetudines"), whose conservation or amendment was the object of the municipal charters of the next century; and the mode of raising and supporting the customary military force for the "fyrd."

These extracts, which I purpose to translate, exhibit the customs of Chester, Lincoln, Oxford, and Oxfordshire and Berkshire, preceded by the title of the Domesday Inquest for Ely, wherein "the early application of the method of inquest by jury for the ascertaining the legal and financial 'consuetudines' is exemplified."<sup>1</sup>

This Ely title, moreover, illustrates what I have already adverted to—viz., the sweeping nature of the inquiry; the quality and character of the inquisitors or surveyors; the local knowledge that was imported into the inquest, and the solemnity attending the inquisition itself.

I shall premise the translation of these extracts with a short account of the leading features in the history of the counties to which these extracts belong, and I shall relegate to a note in the Appendix some terms and matters connected with these extracts, or occurring in the text of them.

I begin with "the *Title of the Domesday Inquest for Ely.*"

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<sup>1</sup> "Documents Illustrative of English History," part iii. pp. 82, 83.

It runs thus: "Here is underwritten the inquisition of the lands in what manner the king's barons inquire, to wit, by the oath of the viscount (sheriff) of the shire, and of all the barons and their frenchmen, and of the whole hundred, of the presbyter (the parish priest), of the præpositus (the reeve), and of the six villeins of every town (or vill). Then how each mansio (dwelling-house) is styled; who held it in the time of King Edward, who holds it now. How many hides there are, how many carrucates<sup>1</sup> (*i.e.* plough-lands freed from liability to "geld") in the demesne. How many men there are in all; how many are villeins, how many cotters, how many serfs, how many freemen, how many soc-men.<sup>2</sup> How much woodland there is, how much meadow land, how many pastures there are; how many mills, how many fishstews. How much has been added or subtracted. How much the total value of the whole came to before this inquisition; how much it is now. How much every freeman or soc-man held and holds.

"And this inquisition is to be directed to three periods, to wit, the time of King Edward, the time when King William came to the throne, and to the present time. Also whether more can be had than is now had."<sup>3</sup>

From this extract out of the Ely survey, I go on to the customs of Chester.

<sup>1</sup> See as to this word, Appendix, Note R.

<sup>2</sup> That was done in order to discriminate the three classes of the less free, viz., villeins, or churls, cotters and serfs, and to keep them separate from the two classes of the more free, viz., the *livri homines*, and his soc-men.

<sup>3</sup> "Inquisitio Eliensis Domesday," iii. 497.

In the seventh century Chester was a place of no small importance. In his campaign against the Deirans, Ethelfrith (*circa* A.D. 613) fought a battle and captured the town. Thereby he was enabled to strengthen his position in his contest with the Welsh.

But long before Ethelfrith's reign its natural advantages marked it out, from a military point of view, as a strong vantage ground of defence.

Under the Roman occupation it served as a station for a legion to watch the wild tribes of what is now the district of North Wales.

At the spot where the river Dee bends westward, and flows to the estuary in the Irish Sea, a site for a town was afforded, and there a Roman camp was formed, round which grew up buildings dignified in time with the name of the City of Deva, and later on Chester, a title derived from the Roman designation, "Castrum legionum."

"So important a post was naturally guarded by fortifications of no common order. The river furnished a natural line of defence on the south and west of the town, a broad morass now represented by the meadows of the Rood Eye, stretching in a wide sweep westwards.

"On the east the site of the town was cut off from the general level of the sandstone rise by a trench hewn deeply in the soft red rock, over which still tower the massive walls, which, patched and changed as they have been in later days, are mainly the work of Rome."<sup>1</sup>

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<sup>1</sup> Green's "Making of England," ch. v. pp. 240, 241.

After Ethelfrith's capture of the city, it grew in size and importance, an importance increased doubtless by the fact that it was a border town, looking upon and guarding the northern limit of the Welsh territory. Hence, in the year A.D. 1070, William the Conqueror found it necessary to reduce it to submission.

It was the one great city of England that for many a long day had not heard the tramp of a foreigner's horse. The stories told of the ruggedness of the country and the ferocity of its inhabitants inspired so much fear in the minds of William's soldiery, that the king resolved to lead this his last expedition in person.

Traversing roads till then deemed impracticable for cavalry, and passing over the chain of mountains which extend north and south in that part of our island, William brought his forces up to the city.

After its capture he erected a fortress, and settled a force in it strong enough to maintain his hold of the territory near it. The command of that force was entrusted to Hugh D'Avranches, surnamed Hugh le Loup.

And so "at Chester, the one remaining fragment of free England, the unconquered land of Chester," says Professor Freeman, "the work was ended which William had begun at Pevensey, and the Conqueror became king over all England."<sup>1</sup>

Apart, then, from its ancient origin and its special importance in the history of Saxon England, its position as a march town, so to speak, a fortified town on the

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<sup>1</sup> "William the Conqueror," ch. viii. p. 120.

border, overlooking and overawing a fierce and turbulent enemy, gave it a distinct value among the towns of Norman England. In addition to all this, it contained within its walls a warlike and rugged population, half soldier, half freebooter, whose rough and untamed temper would be reflected in the customs of the locality, and in its municipal government would be found the characteristic of an aristocratic form stamped upon it from the earliest times.

I therefore now give a translation of

*The Customs of Chester as recorded in Domesday.*

The city of Chester in the time of King Edward was assessed to Danegeld for fifty hides of land. Three hides and a half are outside the city itself; that is to say, one hide and a half is beyond the bridge, and two hides are in Newton and Redcliffe, and in the bishop's burg. These paid tax with the city.<sup>1</sup>

In the time of King Edward there were in the city itself four hundred and thirty-one geldable houses (*domus*); and besides these the bishop had fifty-six houses also geldable. At that time this city rendered as its yearly "ferme" ten and a half marks of silver.<sup>2</sup>

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<sup>1</sup> The assessment here spoken of is the old Danegeld, one portion of the national taxation, levied formerly by the witan of England, passed into the hands of the king, and made in the shires by the royal reeve, in the burghs by the tun-reeve. See, in addition to Green's "Conquest of England," a learned paper on the subject of the Danegeld and the Finance of Domesday, by Horace J. Round, M.A., in "Domesday Studies," vol. i., 1888.

<sup>2</sup> These marks were not actual coins, but money of account. See Appendix, Note R.

Two parts of this belonged to the king, and the remaining third to the comes or earl.

If *the king's peace*,<sup>1</sup> whether given by his hand or under his own writ or through his special commissioner, was broken by any one, the king had for such infraction one hundred shillings (solidos); but if the king's peace had been given by the gesith or earl (comes) at the king's order, for its infraction the earl had a third penny out of the one hundred shillings. Also, if the king's peace had been given by the king's reeve (præposito regis) or the earl's officer, for its infraction the penalty was forty shillings, out of which the earl had a third penny.

If any freeman broke the king's peace and slew a man, all his land and money were the king's, and he was made outlaw (utlagh); but where the offender was the earl's own man, and so subjected to the forfeit, *that* the earl had. Moreover, no person could offer protection to any outlaw save through the king.

<sup>1</sup> The king's peace (pax regis) was an old Saxon regulation, and is spoken of in the laws of Edward the Confessor (ch. xii.).

Its various forms are as follows :—

(1) Given by the king's own hand; (2) Given by his writ (breve) or by his writing, under seal and directed to the sheriff. By this form of pax a royal protection might be created in favour of an individual or of a corporation; (3) Given on the coronation day, in which event it was continuous, or on special holidays, and then it lasted for a period of eight days; (4) Given for the king's four highways; and (5) for the greater—that is, navigable—rivers. Each of these forms of pax was granted at Christmas, Easter, and Pentecost, and each lasted eight days. By them the king's highways and the great rivers were placed under the king's protection. An offence against the pacem regis was an offence against the king, his crown, and dignity.

Whoever shed blood between the morning of the second fair and the noonday of the sabbath made compensation by a payment of ten shillings; and between the noon of the sabbath and the morning of the second fair, for blood shed the fine was ten shillings.

Likewise a payment of twenty shillings was imposed on those who did this (*i.e.*, shed blood) on the day of the Purification of St. Mary, on the first day of Easter, on the first day of Pentecost, on Ascension Day, and on the Assumption or the Nativity of St. Mary, and on the feast day of All Saints.

Whoever slew a man on these holy days made compensation by payment of four pounds; if he did it on other days, forty shillings.

Likewise for forcible entry into a dwelling, in breach of peace (*heinfar*), and for assault (*forestel*), on these feast days and on Sunday, the offender paid four pounds; on other days forty shillings.

For *hangewithan* (*i.e.*, hanging a thief without process of law) within the city bounds, the payment was ten shillings; but if the person committing this offence was the king's reeve or the earl's reeve, he made compensation to the amount of twenty shillings.

Whoever committed *revelach* (robbery) or *latrocinium* (larceny), or offered violence to a female in a house, was liable to make compensation for each offence to the amount of forty shillings.

If a widow lived with a man not in marriage, she had to pay twenty shillings; for a similar offence an unmarried girl paid ten shillings.

If a person within the city bounds seized the land of

another, and could not show good reason therefor, he made compensation in forty shillings; so too did he who made claim thereto, if he could not prove that the land ought to be his.

He who wished to take up any inheritance (*relevare*) by payment of a relief, paid ten shillings.<sup>1</sup> If he neither could nor would pay, the reeve took his land into the king's hand.<sup>2</sup>

He who did not pay the *gablum*, or *demesne* rent, at the time it was due was fined ten shillings.

When a fire broke out in the city, and did damage, he in whose house it broke out had to pay a fine of three ounces of pennies (*i.e.*, five shillings), and to give his next-door neighbour two shillings.

Two parts of all these penalties belonged to the king, and the third to the earl.

If any ships came to the city port, or went out thence, without the king's license, the king and earl had forty shillings from every man who was in the ship.

If a ship came there against the king's peace, and in defiance of his prohibition, the king and earl had both

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<sup>1</sup> The payment for every relief was ten shillings. As regards the value of the shilling, that money, which apparently was only money of account, and not coin in circulation both in Saxon times and at the Domesday period, was by Norman calculation the twentieth part of a pound, and consisted of twelve pence. What its actual value was in Saxon times is not free from doubt. Apparently it was reckoned at five pennies and was the forty-eighth part of a pound. The pound, *libra*, spoken of in these and other parts of Domesday, was a pound weight of *denarii* (pennies), and the testing weight was the *ora*. See Appendix, Note R.

<sup>2</sup> And so it was converted into *terra regis*.

the ship and crew, together with everything in it. But if it came with the king's peace and license, those who were in it sold quietly all they had; but, on leaving, the king and earl had (from them) four pennies for every lesth (*i.e.*, lading).

Where the cargo was marten skins, if the king's reeve ordered the owners not to sell to any one before view and inspection, the penalty for disobedience to the order was forty shillings.

When a man or woman used false measure within the city, on conviction the penalty was four shillings. Likewise for brewing bad beer, the offender was either placed in the stocks (in cathedra stercoris) or paid four shillings to the reeves. This forfeit was taken by the officer of the king or earl in the city, no matter on whose land it was, whether the bishop's or any other man's.

Also every importer of wines paid duty on import (the-loneum) of forty shillings, if he kept his wares more than three nights.<sup>1</sup>

In the time of King Edward there were in this city six moneyers,<sup>2</sup> who besides a fixed payment gave seven pounds to the king and the earl when the money was re-coined.

There were then twelve city magistrates (*judices civitatis*), and these were selected from the king's men

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<sup>1</sup> That is, the importer was allowed three days for clearing and selling; after that he was charged as for import dues.

<sup>2</sup> *Monetarii*, persons privileged to coin money. It appears from the text that these moneyers had to pay two sums: one a fixed sum for their office, and another for the privilege of re-coining.

and the earl's men.<sup>1</sup> If any of these stayed away from the hundred on the day when it was sitting, without clear excuse, he paid ten shillings, divided between the king and the earl.

For rebuilding the city wall and the bridge, the reeve, by notice, summoned one man for every hide of the county. For every man who did not obey the summons, his lord paid to the king and the earl forty shillings. This penalty was exclusive of the firma<sup>2</sup> (burgh composition).

At that time this city returned as its yearly "ferme" assessment forty-five pounds and three bundles of marten skins. Of this one-third went to the earl, and two-thirds to the king.

When Earl Hugo (*i.e.*, Hugh d'Avranches) received the command of the city, it was not worth more than thirty pounds, for at that time it was very much wasted. There were then two hundred and five houses less than there were in the time of King Edward. Now there are the same number exactly that Hugo found.

Mundret held this city of the earl for seventy pounds and one mark of gold. He had it to farm for fifty pounds and one mark of gold.<sup>3</sup> All the earl's pleas were in the county and the hundred,<sup>4</sup> except Inglefield.

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<sup>1</sup> Twelve judices, probably the twelve lawmen having sac and soc, who are spoken of at Lincoln, Stamford, and Cambridge.

<sup>2</sup> Firma (*i.e.*, "firma burgi") was a fixed sum payable by way of composition for the total profits of the town.

<sup>3</sup> That is, pounds' weight of denarii and one mark of gold, which was only money of account, not coin. Therefore this payment means the equivalent or value of one mark of gold.

<sup>4</sup> That is, were held in the shire-moot and the hundred-moot.

The land, (whereon stands the church of St. Peter), and which Robert of Rodeland claimed as tain-land, as his county proved,<sup>1</sup> never belonged to the manor outside the city, but does belong to the burgh, and was always subject to the customary dues of the king and the earl, just as is the case with the other burgesses.

Of the city of Lincoln, whose customs come next for notice, a good deal might be written.

I will, however, draw your attention to a few of the chief events in its history.

It was a Roman settlement of some note. Lindum has left its name, "*Lindi Coloniæ*" to the Lincolnshire which was afterwards formed round its ruins.

Through it ran the old Ermine Street, and the Fosse-way connected it with *Ratæ*, or Leicester.

Round the square Roman fortress a fortified suburb grew up, and so it became an important inlet for the coasting trade of central Britain.

But on the departure of the Romans, and through the troubles that then ensued, it fell into a heap of ruins, leaving only its name as the settlement of the *Lindiswara*, or dwellers about Lincoln, to show what it formerly was.

Three hundred years later the Danes made their mark upon the land, as the numerous "*bys*" throughout the county testify.

In the tenth century it formed a portion of the eastern or Danish half of older England, and was part of the district known as "*the Five Boroughs*": Derby, Leicester, Stamford, and Nottingham being the other four.

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<sup>1</sup> That is, as was proved at the shire-moot.

The independence of these five boroughs (and I quote from Mr. Green)<sup>1</sup> was unfettered by any kingly rule. Each of them seems to have had its own Jarl and Here, or army, while (if we may judge from the instance of Lincoln and Stamford) the internal government of each was in the hands of twelve hereditary "lawmen."

As time went on the trade of Lincoln continued to increase and improve. The merchants of Lincoln were in close connection with the north, and so trustworthy were they that a Norwegian king, on the eve of an expedition, could leave his treasure in the hands of one of them.

In Knut's time its trade was largely extended, for then—as we read in the old chronicle<sup>2</sup>—the city, with its merchant guild and its twelve lawmen (ruling the city sokes), was the "*emporium hominum terra marique venientium*."

If we take Domesday as our exponent, the city would appear to have suffered less mischief from the troubles of the preceding times than other cities experienced, nor do we find from the survey that evidence of lawlessness and roughness of life which, as I have shown, was so conspicuous in the annals of Chester.

Danish and Saxon names and Saxon life survived, and kept their hold over the place in full strength down to the period of the Norman survey.<sup>3</sup>

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<sup>1</sup> "Conquest of England," ch. iii. p. 122.

<sup>2</sup> William of Malmesbury.

<sup>3</sup> For fuller details about Lincoln and the older settlement, see Green's "Making of England," ch. i. p. 4; ch. ii. pp. 58 and 76, and "Conquest of England," ch. iii. p. 122; and ch. ix. pp. 449, 450.

*Now these are the Customs of Lincoln.*

In the city of Lincoln there were in the time of King Edward nine hundred and seventy inhabited houses.

This number, following the English reckoning, is taken at one hundred for one hundred and twenty.

In the city itself there were twelve lagemen (lawmen), that is, men having sac and soc. Hardecnut, Suartin, Grimwold's son, Ulf, Suortbrand's son, who had thol and theam, Walraven, Alwold, Britric, Gurel, Albert Godric Eddeva's son, Siward the priest, Lewine the priest, Aldene the priest.

Now there are just as many, having similar rights of sac and soc: (1) Suardine, in the place of his father Hardecnut; (2) Suartin; (3) Sortebrand, in the place of his father Ulf; (4) Agemund, in the place of his father Walraven; (5) Alwold; (6) Godwine, the son of Britric; (7) Norman the Fat, in the place of Gurel; (8) Albert, Ulf's brother, is still living; (9) Peter of Valenges, in the place of Godric Eddeva's son; (10) Ulnod the priest, in the place of Siward the priest; (11) Bernard, in the place of his father Lewine, who is now a monk; (12) Ledwin, the son of Raven or Rawen, in the place of Alden the priest.

In the time of Edward the city of Lincoln rendered (*i.e.*, made return) to the king as due for yearly "ferme" twenty pounds, and to the earl ten pounds. Now it renders one hundred pounds in oræ of twenty pennies to the ora or ounce, divided between the king and the earl. The return for the mint is seventy-five pounds (*i.e.* of denarii).

In south Lincoln the financial and legal customary

settlement to the king and earl is returned at twenty-eight pounds.

In North Riding, to the king and earl it is returned at twenty-four pounds.

In West Riding, to king and earl it is returned at twelve pounds.

In South Riding, to king and earl it is returned at fifteen pounds.

For infraction of the king's peace, whether it had been given by the king's hand or by his seal, the fine is imposed on and through the eighteen "hundreds." Each "hundred" pays seven pounds; of these, twelve of the "hundreds" pay to the king and six to the earl.

If any one has been outlawed for any offence by the king, or by the earl, or by the men of the shire reeve-court, to him no one could give protection save the king himself.

There is no written evidence for the existence of Oxford as a city, or burgh, or town before the beginning of the tenth century, when that part of the country was a borderland of East Mercia.

At the close of the ninth century a house of secular canons had grown up round the tomb of a local saint, Fretheswid or Fredewide, on the slope of a gravel spit between the Thames and the Cherwell, "where a wide and shallow reach of the larger stream offered a ford by which the cattle drovers from Wessex could cross."<sup>1</sup>

There a little town grew up, which was the commencement of the future city. There Alfred established a mint.

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<sup>1</sup> Green's "Conquest of England," ch. ix. pp. 437 and 439.

The town, from its situation, throve in wealth and importance, dividing with London the traffic along the Thames; so that in Knut's time it was a place of note, and we read of its burghers bargaining with an Abbot of Abingdon that, in return for a toll of herrings, which their barges were to pay in passing, he should cut a new channel for their traffic.

It was at Oxford that Knut, after the victory of Assandun and his coronation in London, held a witenagemot, when he formally renewed Edgar's laws, and showed himself to his conquered subjects as one who resolved to rule in English fashion.

It was at Oxford, too, that some few years later, on Knut's death, the witan gathered again to decide the question of the succession.

When Eadward, in A.D. 912, annexed London and Oxford, each town already had "lands which owed obedience thereto," lands which could hardly have been other in extent than the present Middlesex and Oxfordshire.

As Middlesex owed its being to the severance of London from the rest of Essex, so in the lands about Oxford we may possibly, says Mr. Green, see the district won at a time when it served as a frontier town against Guthrun's realm.<sup>1</sup>

Oxfordshire owes its creation to the same cause that led to the creation of Herts, Bucks, and Beds—that of military necessity, districts assigned to the fortresses which Eadward raised at these points.

I now give the extracts from Domesday of

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<sup>1</sup> "The Conquest of England," ch. v. p. 237.

*The Customs of Oxford and Oxfordshire.*

Oxenefordsire. In the time of King Edward, Oxeneford rendered for theloneum (that is, the right to levy duties on imports) and for gablum (demesne rent), and for all other customary charges throughout the year, first to the king twenty pounds and six four-gallon measures (sextarios) of honey. Then to the Earl Algar ten pounds for an adjacent mill which he had within the city bounds.

When the king went on a military expedition, twenty burgesses went with him in lieu of all the rest, or gave the king twenty pounds as a discharge for all the citizens from service.

Now Oxenford renders sixty pounds, counting twenty pennies to the ora (ad numerum de viginti in ora<sup>1</sup>).

In the town itself, both within and without the wall, there are two hundred and forty-three houses liable to the chief or Danegeld tax (geldum), and not reckoning these there are five hundred houses minus twenty-two, so wasted and destroyed that they cannot make return for this geld.<sup>2</sup>

Then follow the names of the tenants.

<sup>1</sup> Ora had two meanings. It meant sometimes money that is not coin in actual circulation, but money of account. There were two kinds of ora: one estimated at sixteen peninges, forty pence; the other at twenty peninges, fifty pence. Ora also meant, as here, a weight; so many ora went to the pound (libra). Where, as here, it was the "libra ad numerum," then the ora was required to be up to twenty denarii (pennies) in weight. See Appendix, Note R.

<sup>2</sup> Oxford had been stormed and taken by William not long before this, when out of seven hundred and twenty-one houses, four hundred and seventy-eight were fired and consumed. This was in revenge for a gross insult to the king from one of the burgesses.

All these above-written hold these aforementioned houses free, by reason of the duty of wall-repairing (*i.e.*, the city walls). All those houses which are called mural<sup>1</sup> were in the time of King Edward free from all customary payment except for military expeditions and for the repairing the wall.

All the burgesses of Oxenford have common of pasture (*habent communiter pasturam*) outside the wall, paying for it six shillings and eight pennies.

The county of Oxford renders a three nights' rent (*trium noctium firmam*), *hoc est*, to the amount of one hundred and fifty pounds.<sup>2</sup>

For augment, twenty-five pounds by weight.<sup>3</sup>

For the burg or borough, twenty-five pounds by weight.<sup>4</sup>  
For the mint (*moneta*) twenty-five pounds weight of

<sup>1</sup> They were called "*murales mansiones*" because, if need required, the tenants were bound to repair the city wall at the king's command.

<sup>2</sup> This "*trinoctium*" in older times was called "*feorm-fultum*." It was the tax for the king's sustentation as he went through his realm. The composition for it varied greatly. Mr. Green ("*Conquest of England*," p. 404, note 2, citing Stubbs' "*Constitutional History*," vol. i. 88, 117) says that *feorm-fultum* was not converted into money payment till after the Conquest. Perhaps the words *hoc est* mark the fact of the commutation having taken place, and having become an established institution. Quære, whether these words may not be translated, "This is now fixed at."

<sup>3</sup> As to what this means I am puzzled. It may mean either an additional or extra tax, or it may be translated thus: "For additions made to it."

<sup>4</sup> That is, the "*firma burgi*," or composition for the total profits of the town payable to the lord or king, within the borough, compounded for as here by a fixed sum, rendered by the burgesses, and apportioned among themselves.

pennies, reckoning twenty to the ora ; for providing arms, four shillings.

For the queen's tax,<sup>1</sup> to the amount of one hundred shillings.<sup>2</sup>

For hawking, ten pounds.

For each sumpter horse, twenty shillings.

For dogs, twenty pounds' weight of pennies, reckoning twenty in the ora ; also six four-gallon measures of honey, and twenty pennies for customary dues.

For infraction of the king's peace (whether it had been given under his hand or by seal), if the consequence be the death of a man living under the king's peace, the limbs and life of his slayer will be at the king's disposal, should he be caught. If he should not be caught, he will be counted an outlaw by everybody, and whoever chances to kill him shall have what is on him at his free disposal.

<sup>1</sup> The queen's tax (called *gersuma*) was a due claimed by the queen-consort, the old Latin term for it being *aurum reginæ*. It was a payment of an extra tenth on every voluntary fine or oblation of above ten marks paid to the king. It lasted in England down to the early part of the seventeenth century, being claimed by Queen Henrietta Maria, the Consort of Charles I. Lappenberg says that so far as he could trace it, it was in ancient times confined to Mercia and East Anglia. *Gersuma* appears in many old charters, and is used sometimes as meaning fine, sometimes exaction or demand, sometimes income. See Ducange and Cowell, sub verbo "*gersuma* ; " cf. also Lappenberg's "*Anglo-Saxon Kings*" (Bohn's edition), vol. ii. ch. xix. p. 379.

<sup>2</sup> As in Domesday reckoning, following the old Saxon system, shillings (*solidi*) were only moneys of account, not actual coins, in this case the return for the queen's tax was to the amount of one hundred shillings in *denarii*.

If any stranger is desirous of staying in Oxenford, and happens to die there as a householder, leaving no relatives, the king shall have all he has left behind him.

Whoever has forcibly broken into the curtilage or house of another, or entered them, the breaking being accompanied with man-slaying, or wounding, or assault, must pay one hundred shillings to the king.

So, too, he who, when summoned to attend the military muster, does not go, will pay one hundred shillings to the king. If any one shall slay another within his curtilage or house, the body of the offender, and all his property, are in the king's power, except the wife's dower, supposing she has been dowered.

About Berkshire, except the name, and the fact that it was during Alfred's time a stronghold of the Danish invaders, and that he was born here (at Wantage), there is nothing remarkable.

The name, so Asser says, is derived<sup>1</sup> from the large quantity of bearroc or box-trees which grow among its woodlands, but its position along the Thames Valley made it a county of importance from a military as well as a trading point of view.

*These are the Customs of Berkshire.*

When the great tax (geld) was paid in the time of

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<sup>1</sup> Illa paga quæ nominatur Bearroescire quæ paga latiter vocatur a Bearroc sylvæ ubi buexus abundantissime nascitur. "Berkshire," says Mr. Green, "was a district wedged as it were into an angle which the Thames makes as it runs from its head waters eastward to Oxford, and then turns suddenly to the south to cleave its way through chalk uplands to Reading and the Kennet Valley." ("Conquest of England," ch. iii. p. 98.)

King Edward, it was the common custom throughout the whole of Berkshire that the hide paid three pennies and a halfpenny before Christmas Day, and as much at Pentecost.

If the king was sending an army anywhere, there went one soldier only for (every) five hides, and, for his sustenance or pay, for every hide there were given to him four shillings for two months.

Now, in respect of these moneys, they were not sent to the king, but were given to the soldiers.

If any one on summons to the "fyrd" did not go, he forfeited all his land to the king. But if any one, having the intention of staying away, promised to send another in his place, and the one who was to be sent stayed away, his lord was quit therefor for fifty shillings.

On the death of a thair, or a soldier of the king's demesne, there were sent to the king by way of relief all his arms, and one horse saddled and another horse unsaddled. But if he had dogs or hawks, they were sent as a present to the king, who might take them if he chose.

Whoever slew a man who was under the king's peace suffered forfeiture to the king of body and goods, all of them.

Whoever in the night time broke into a town (*civitatem*) paid by way of penalty one hundred shillings to the king, not to the sheriff (*vice-comiti*).

Whoever was summoned to assist in the king's hunting (*ad stabiliationem venationis*), and did not go, had to pay by way of penalty fifty shillings to the king.

With these specimens of Domesday book, I close this

portion of my inquiry into the progress of social and political life in England.

Very different will be the characteristic features of its social, legal, and political history that present themselves for notice between the death of William the Conqueror and the reign of Henry the Second.

We shall then see the change in all the institutions of the country to the more complete feudal type. We shall see the rise of a powerful nobility, whose struggles with the Crown were of material assistance to the people in their efforts to maintain self-government, and to retain local independence.

We shall come to the era of charters, whether general charters of liberty or special charters assuring to the boroughs their old customs and customary life.

We shall note the development of borough life and the expansion of borough privileges.

We shall discover the commencement of the later system of our English law, and the rise to influence of the lawyers in the constitutional as well as legal settlement of the country.

Finally, we shall see the complete amalgamation of the English and Norman people, followed by a royal policy totally different from that which, prior to the reign of Henry the Second, had been exhibited by any of his predecessors, viz., a desire to govern England, not as foreign rulers, but as English kings.<sup>1</sup>

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<sup>1</sup> See "Documents Illustrative of English History," by W. Stubbs, M.A., pp. 76-117.

## APPENDICES.



## APPENDIX I.

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### *EXCURSUS ON THE EARLY HISTORY OF THE EXCHEQUER.*

IN this note I shall give an account of the early history of the Exchequer, for that was the court that during the years which ensued between the reigns of William the Conqueror and Henry the Second became not only the place where the assessments, dues, and payments of the country were received and acknowledged, but where the various legal questions connected with all this business were argued and settled, and where the moneys actually paid in were tested and approved.

As I have already stated, in the times preceding the Conquest, and probably for some few years after it, the receptacle of these customary payments was the royal hoard or treasury, and the official whose duty it was to see to them was the ancient "hordere," who, under the later title of Treasurer, occupied a position of dignity in the royal household, and probably had a seat in the "Curia regis" itself.

The early history of the Exchequer is well told by its best and ablest exponent, Richard, Bishop of London, and from his work (the "Dialogus de Scaccario") I give the following account of it.

At what particular period of time the Exchequer made its appearance in England as a separate and distinct branch of the Curia regis, it is not easy to say; but this is clear, that in the reign of Henry the Second, one hundred years or so after Domesday time, it was established in complete and efficient order. Its range of work was then thoroughly marked out; its officials were well known, their respective duties were assigned and limited, and its

high importance in all matters relating to the revenue of the country was recognised and appreciated.

It took its name, "scaccarium," from the covering or cloth that was spread on the quadrangular table at which the chief officials sat. This cloth was black in colour, divided and marked out by stripes into spaces of about a palm's breadth, whereon were laid small stones.

From its apparent resemblance to a chess-board, the name "scaccarium" was given to the table, and so by extension to the court itself.

A more "abstruse reason for the name," says the learned author of the "Dialogus," "may be found in this surmise, that as in the game of chess there are two sets of combatants, who attack or defend, subject to certain rules and limits, so here the officials are arranged into two sets, some acting as presiding officers, others sitting ex-officio, and none of them can act in any way independent of the established laws. Again, as in the game of chess the contest depends on the kings, so here the conflict and the contest are intrusted in the main to two individuals, to wit, the treasurer and the sheriff, each of whom sits at the account, whilst the rest sit round as judges to observe and to adjudicate."

In Henry's time there were two Exchequers, the upper and the lower Exchequer, whose method of proceeding was in some special points distinct, but whose care and duties were one and the same, viz., to watch and maintain the king's interests.

"The origin of the upper Exchequer," says the author from whom I am quoting, "dates from an early period of time, and as years have passed on it has acquired strength and solidity consequent on the authority reposed in its administrators. It may be said to owe its commencement to the conquest of the kingdom by King William, the idea of it having been imported into England from the Exchequer that existed across the sea. Still, in very many and very important points, these two institutions differ.

"Some persons hold the view that its use was known to the earlier kings of England. They assign as a reason that some very old country folk belonging to the Crown

lands (whose memory, by the way, is not quite trustworthy) declare that they were well assured of the amounts they had to pay out of every pound of rent from the stories told by their fathers and grandfathers of a farm register in which were made entries of these amounts. Whatever credit one may be disposed to give to these tales, the explanation afforded thereby does not touch the history of the Exchequer; it only affects that relating to the payment of rent.

“On the other hand, there are people who assert that the ‘farm register’ belongs to the times of the English kings, and that there is no mention of any ‘farm register’ in the Doom book, although in that record a full account of the whole kingdom is given, both in the days of King Edward and in that of King William, and the value of every estate is set down accurately. If then ‘farm registers’ were in existence, the probability is that at the date of the survey they were kept only by order of those officials who were responsible for the king’s dues, and for special reasons, not as a general practice.”

It is therefore difficult to assign any fixed period at which the institution of the Exchequer made its appearance, or when it became a court separated from the Curia regis.

“At whatever period the practice was introduced of taking payments, of giving acquittances for and settling disputed questions respecting the rents, dues, assessments, fines, and other moneys belonging to the king or applicable to the requirements of the country in a distinct chamber or court, certain it is that it received the strong support of the magnates of the land. So that now no one can venture to infringe the statutes of the Exchequer nor dare to resist them. There is this, too, in common between the Exchequer and the King’s Court, that no person whatever can act in contravention of the records or the orders of each of them. And the importance of this court (the Exchequer) ranks high, as well on account of the authority attaching to it by virtue of the effigy of the king graven on the treasury seal, as on account of that of the personages who sit there, and by whose skill and learning the constitution of the whole realm is upheld. For in it sits

the king's chief justice, next to the king the principal official in the realm, by reason of his judicial capacity. In it are some of the chief magnates of the land, who act with him as privy councillors, and so the result is that the final orders decreed by personages of this eminence are accepted as law immutable." The writer then goes on, "All the personages referred to by me, whether sitting *ex-officio* or by virtue of the king's special order, take their seats for the purpose of hearing and deciding on such special questions as arise from time to time in the subjects dealt with. For the skill and learning of the Exchequer are visible not in the matter of argument, but in that of the varied decisions which it has to give. For it is easy enough by arithmetical computation to strike a balance between the sum assessed and the amount actually paid in; but when there turns up a complicated inquiry on various points affecting the revenue, consequent on varying modes of requisition and want of uniformity therein on the part of the sheriffs, the decision as to what ought to have been their proper plan of proceeding is a business of grave import, as some think; and therefore it is here that the skill and knowledge of the Exchequer are regarded with special respect. The decisions on doubts and doubtful points cannot be drawn up in one complete volume, because as yet all this class of doubts has not been disposed of, but some of the points that in our presence have been heard and settled, I shall refer to further on."

From this narrative, then, it would appear that the idea of a separate court or chamber for revenue purposes was a foreign one. That it had not taken any clear form, nor had any attempt been made to give it one in the days when the Norman settlement under William was effected; that its establishment was owing to the complication of the accounts of the country, and to the legal doubts and questions that were necessarily raised as the pecuniary requirements of the kingdom became greater and more pressing; and that as soon as the idea of an Exchequer Court had taken definite shape (when, it is not easy to say), it grew so rapidly in favour with all ranks, from the king downwards, that it was in less than a century re-

garded as a national institution, part of and almost on an equality with the old Curia regis.

The very titles of the chapters or sections of the "Dialogus" bear witness to the large range of matter that came under the cognizance of this new court, and show that it was an important factor in the development of constitutional principles in England.

That is not, however, the reason why I am now referring to it. I refer to it here for the information it gives, not only as to the procedure in vogue at the time for getting in and settling and entering in the rolls the accounts of the sheriffs, but as to the coinage of the country.

The "Dialogus" shows us that the coinage of the realm had fallen into a very bad plight.

So large an amount of mischief had been done by clippers, defacers, forgers, and imitators, that the energies of the Exchequer were taxed to the utmost to secure proper payments by some satisfactory method of test.

In old times a simple plan had been adopted to make up for such deficiencies in the coins paid into the Treasury as were assumed to be inevitable.

It is very probable that at first, and for some time, the ordinary practice of counting the coins when paid in was deemed to be a sufficient protection.

Then, partly for the sake of quicker despatch, and partly in consequence of doubts respecting the proper weight of the coins offered to the treasury, the plan of weighing the coins was taken up, and the term applied to this form of accepted payment was "*solutio ad scalam*."

Then it was found (but long prior to the establishment of the Exchequer) that, either from ordinary use and circulation, or from trick and fraud, the actual value of many of the coins of the country was considerably diminished.

To remedy this the rule was adopted of putting an arbitrary extra charge of six pennies in every pound in tale paid into the Treasury. This mode of accepted payment was called "*solutio ad pensum*."

Moreover, as Domesday shows us, for some parts of England the additional method of the fire test was resorted

to, and the accepted payment of coins so exacted was called "*solutio ad ignem et pensum*."

Between the period of the Conquest and the reign of Henry the Second the deficiency in the coins became so great that at last the matter was taken in hand by the Exchequer, and then a more elaborate process of testing by combustion was established, and this is how it was managed, and I again refer to the "*Dialogus de Scaccario*."

In the course of his narrative, the writer (who styles himself *magister*, or teacher) explains very carefully the names, authority, and duties of the various officials who took their seats in the upper and lower Exchequer. Among them were two who had no assigned seat at either board, but were called in and discharged their functions as occasion demanded, and by order of the President or the Treasurer. These two officials were the knight president of the silver assay, and the melter (*fusor*).

In reply to the query of the pupil (*discipulus*) as to what their special work consisted of, the teacher thus replies:—

"The knight president of the silver assay (*miles argentarius*) carries from the lower to the upper Exchequer the sack containing all the silver that has been paid in below for the purpose of having it tested. This sack is sealed with the seal of the sheriff. Then, in the view of all (present in the upper chamber), the '*miles argentarius*' takes out from the sack forty-four shillings,<sup>1</sup> which he had previously marked.

"These are thrown together and tested as to weight. This is done by placing a proper pound weight in one basin of the scales, and in the other as many of the pennies as are equal in weight thereto. These are counted by him, and marked as up to standard weight.

"Having ascertained their weight, the same official puts aside into a cup (*ciffum*) one pound, that is, twenty shillings' worth of these tested pennies. The remainder of the same tested quantity he places in a purse. I should men-

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<sup>1</sup> That is, forty-four shillings' worth of pennies.

tion that two ordinary pennies are paid by the sheriff, not by the treasury, to the metal founder as his recompense. Then the silver assayer, the sheriff whose money is to be assayed, and two other sheriffs selected by the president of the Exchequer, or in his absence the Treasurer, proceed to the furnace. There the metal founder or melter appears by summons and takes his stand with his necessary implements. Then, in the presence of these persons, as well as of certain barons who have been specially delegated, the coins are carefully counted and handed over to the melter. Thereupon this person counts the coins carefully, lays them in a small vessel containing glowing coals, sets the vessel on the furnace, and, in accordance with the ordinary process of melting, reduces the coin into a mass, stopping from time to time to cleanse the silver.

"It behoves him to be very careful not to go beyond the proper heating point, nor by insufficient melting to spoil and waste the heap.

"For the former fault the king suffers, for the latter the sheriff.

"So the coin melter must be constantly on his guard, and as vigilant as possible not to allow the silver to be discoloured, but to come out properly melted and pure. And this they ought to look to who are commissioned by the chief officers to watch the work.

"After the assay has been made, the 'miles argentarius,' attended by his overseers, carries the result to the barons present, and then in the sight of all he weighs the mass with the aforementioned pound weight.

"Then the result of the examination is chalked on the top, in this form: 'Yorkshire. In the fusing so many (stating the number) have gone to the pound,' and this is called 'the assay.' This inscription, be it noted, can only be recorded on express permission to chalk the words.

"Now, if the sheriff from whom the coin came makes complaint that more metal was consumed than need have been, owing to over-heating or to infusion of lead, or if the coin melter himself admits that the testing has failed, then the twenty shillings' worth of pennies that are still

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in the purse are counted out before the barons, in order that they may be submitted to test by the same process.

"You see then the reason why forty-four shillings' worth of pennies were taken out of the large heap of coin at the commencement of the proceedings, and placed in the purse that was sealed with the sheriff's seal.

"Note again, that the melter receives two pennies for the assay, but if he again goes wrong, even after a third assay, he loses these, and must be contented with the two pennies that were first paid to him.

"Now all these tests are applied, not to one pound alone, but to all those which each sheriff pays for his county dues (*firmæ*). Every sheriff knows well that the loss on this one pound under the assay will be deducted from the other pounds.

"Therefore, supposing his payment in is one hundred pounds in coin, and it turns out that there is a deficiency in one of them to the extent of twelve pennies, he will be credited only to the amount of ninety-five pounds (and will have to make up the difference)."

The explanation of the cause and origin of this assaying process is thus described :

"The history dates from an early period. According to the traditions of our fathers and grandfathers, it seems that in the first few years after the Conquest the rents of the king's lands were paid, not in money, but in kind; that is to say, he received from the tenants all the different articles which were wanted for the daily requirements of his household; and the persons whose office it was to collect these dues knew how much was to come out of each estate.

"But in order to provide for the pay and donatives of and to the soldiers, and to pay the fees taken in the various lawsuits and other legal business of each county, as well as the different charges assessed on the cities and castles where the cultivation of the land was not practicable, payments in coined money were required. Therefore, during the whole period of William the First's reign, a silver assay was known and used, continuing up to the reign of his son Henry.

"I, too, can testify to this matter, for I have met

persons who told me that they had witnessed the carriage of articles of food at stated times from the king's estate to the royal court, where the officials were certified as to the amounts due, and the particular articles to be received from each named county. Thus county A would have to send in so much wheat, county B so much meat of various sorts, county C so much horse fodder; and so on through the different counties.

"In process of time the royal officials, in making up their accounts against the sheriffs, hit upon the idea of a kind of money reckoning.

"For instance, if a particular county had to furnish wheat sufficient to provide bread for one hundred men, the return as against the sheriff was entered as one shilling; for the carcase of a pasture-fed ox, one shilling; for a ram or an ewe, four pennies; for the provender of twenty horses, four pennies; and so on through all the different county returns.

"In the time of King Henry, William's son, there were many foreign expeditions, and a good deal of armed rebellion in many remote parts of England. The expenses consequent thereon were large, and large money payments were absolutely necessary. Meanwhile another trouble arose.

"The king's court was besieged by a host of discontented cultivators of the land; nay, more, and this was specially annoying to the king, often, as he journeyed through the country, a crowd of farmers would beset the road with their ploughshares, which they showed and offered to him as a sign of the bad plight to which farming was reduced owing to the general agricultural distress. Further, they complained of the grievous oppression from which they were suffering by reason of the demands for food made and insisted on by the royal purveyors, who invaded their lands and houses, and carried off by force what they chose. Stirred by these reclamations, and roused to action by the advice of the Great Council, the king sent certain persons of approved prudence and discretion through the realm as commissioners, with instructions to make personal inquisition, and to report. Among other things, part of their duty was to fix a money value

upon the returns for food and provender; to ascertain what was the total amount in each county of all the sums payable by it, and to make the sheriff of each county not only liable for them, but pay *ad scalam*; that is, on every pound of twenty shillings to add six pennies over. This plan was adopted on the presumption that the overcharge of six pennies would be sufficient to cover any probable deficiency in the coin of the realm, which was at the time not in so bad a plight as was afterwards the case.

"In this, however, the authorities were mistaken, and were compelled to issue orders that the "ferm" dues of manors should be paid not only *ad scalam*, but *ad pensum*, but this was feasible only when large amounts were paid in.

"Still these methods of payments into the Exchequer continued for some years; and so you will constantly find entries of this kind in the old year rolls: 'Paid into the treasury one hundred pounds *ad scalam*,' or 'Paid into the treasury one hundred pounds *ad pensum*.'"

"Meanwhile there came to the council a man of good sense, sound judgment, and discreet speech, and always ready to give a trustworthy opinion on all matters of importance."

[This was Roger, Bishop of Salisbury, the great uncle of the author of the "Dialogus."]

"He was advanced to the Exchequer by the king's own order. He soon found that the then existing method of payment into the Treasury was only a protection in respect of number and weight, but did not guard against the mischief of bad quality; for in the absence of a proper testing process, a pound weight of silver might not be good payment, owing to intermixture with copper or brass.

"Therefore, after consultation with the king, he introduced into the Exchequer the plan of testing the 'firmæ' by melting and assaying. Thus did he protect the interests of the crown and of the country.

"The interests of the country were protected in this wise: That as the sheriffs soon saw that they would be the sufferers if the coinage turned out to be of base quality in fusion when they paid in their assessments,

they began to look carefully after the moneyers in their own counties, and to see whether they did their coining work properly and honestly. If they did not, the sheriffs inflicted such severe punishments as effectually deterred others from attempts at fraud.

"In those counties where by ancient custom the land was *terra regis*, the payments were made in tested silver.<sup>1</sup>

"Those counties that paid their assessments incidentally, and as occasion required, into the treasury, paid by number (and so were liable to the testing process in the Exchequer). Such are Shropshire, Sussex, Northumberland, and Cumberland. The sheriff also is allowed to pay in sums of tested silver by weight, instead of blanchéd money, and so he avoids the risk of the fusing process; but then the king's coin melter is entitled to inspect the coins and pass them as approved."

I append to this account of the method of testing the moneys paid into the Exchequer from the "Dialogus" a short extract, from the same work, on the subject of what were called blanchéd or white lands (*blancos fundos*). I do so not so much because it bears upon the matter above discussed,—namely, the history of the coinage of the realm at and after Domesday time,—but because it shows a curious use of the word *blancus*, and may account for the meaning of the word "white," which is to be found in various parts of England in connection with land: *e. g.* in Essex we have Whitehall, near Chingford, White-Roothing, White-Notley, White-Waltham; in Berkshire, White Knights, etc.

This is the account that Richard, Bishop of London, gives of the grants "*fundorum blancorum numero*" (pt. iv. § v.):

"The originator of this mode of grant, and the reason for it, are not easily traceable. When we read of the payments of 'firm' dues (*numero*) by number, we understand the meaning to be that a receipt was given on the counting only of the coins, not on the testing of them. Therefore, when the king made a grant of land together

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<sup>1</sup> The term for them was *firmæ blancæ*, blanchéd dues and assessments.

with the hundred, that is with the privilege of private jurisdiction in the shape of sac and soc, the land so granted was called 'blanched land' (*fundum blancum collatum*). But when the grant was only of the estate, and not of the hundred as well, in consequence of which the profits from it (*firmæ*) were said to be dealbatae, unblanched, it was called a grant by number (*fundus numero datus*).

"Now, on the grant of an estate the grantee has to carry into the Exchequer, in Michaelmas term, the king's writ, or the king's charter, for the purpose of having its assessment fixed for the sheriff's information. Otherwise it will not be entered in the great roll, nor will any assessment in respect of it be made against the sheriff.

"The entry is made in this fashion: next to the entry of the fixed eleemosynary payments, the tithes, and the equipments or liveries, at the top of the page is written: 'In the lands granted to N. M. in this locality, twenty pounds blank or blanched; and to N. M. in this locality, twenty pounds in number (*numero*).'"

## APPENDIX II.

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### NOTE A.—On the titles *COMES* and *DUX*.

THE title "*comes*" was applied to several classes of officials, and dates from a somewhat early period of the Imperial Government of Rome.

In the first stage of their existence in Roman polity, the *Comites* were assessors and advisers attached to the retinue of the governor of a province or some other high official. Then they attained to the dignity of "*companions of the Imperial Court.*" Eventually they were advanced to the position of governors of provinces, superintending the general administration as well as the military arrangements therein.

In the Theodosian Code the collective body of the *comites* is styled "*comitiva.*" For approved merit in the discharge of the duties of a public official a person was inscribed in the *comitiva*, and received by way of distinction the title "*comes.*"

In his treatise, "*De re Militari*" (cited in the Digest 49, 16, 5, § 2), an old writer, Arrius Menander, speaks of "*dux*" as synonymous with "*præses militum,*" or general in command.

In the Theodosian Code "*dux*" and "*comes*" are described as occupying positions of equal dignity in the provinces, and as entrusted with the duties of general superintendents of all the military in each respective province.

In Sicily the *dux* was of equal authority to that of the *prætor*; and in a rescript from the Emperors Honorius and Theodosius (the younger) (*circiter* A.D. 407) to A. A. A. Stilicho, the latter is addressed as "*comes et magister utriusque militiæ,*" and is directed to order the "*comites aut duces militum*" to carry out a strict inquiry in respect of a charge of certain abuses which had crept into his province in the matter of elections to the posts of tribunes and prefects of the cohorts (see Cod. Theod., lib. vii. tit. xiii. §§ 18 and 19).

"The titles counts and dukes," says Gibbon ("*Decline and Fall,*" ch. xii.), "have obtained in modern languages so very different a sense from their Roman form, that their use may occasion some surprise. But it should be recollected that the second of those appellations is only a corruption of the Latin word which was indiscriminately applied to any military chief. All these provincial generals were therefore dukes; but no more than ten among them were dignified with the rank of "*count*" or "*companion*"—a title of honour, or rather favour, which had been recently invented in the court of Constantine.

A gold belt was the ensign which distinguished the office of the counts and dukes, and besides their pay they received a liberal allowance, sufficient to maintain one hundred and ninety servants and one hundred and fifty-eight horses."

According to Savigny (see "*Gesch. d. Röm. Rechts. im Mitt.*," I. iv. §§ 79, 80), the history of this office and title (viz., Comes) in the Frankish system of polity is as follows:—Beginning with the period of time that Tacitus dealt with (see "*Germania*," c. 12), we have evidence of the existence of certain chief men, elected by popular vote into the national councils, whose duty it was to administer justice in the cantons and villages. Coming down to later times, as the old laws and documents show, we read of an official occupying much the same position and discharging the same duties among the Franks, called "graf," "grafio," "gravio," "graphio." On the settlement of the Franks in the conquered countries, carrying with them as they did many, if not all, of their ancient customs and national modes of trial, the graf made his appearance as a judicial dignitary, and that by name. To this name the Roman people gave as a translation the term that they were familiar with, because the duties and position of each seemed much alike. That term was "comes," and so, in course of time, the two titles were in use as meaning the same office (each having the same original meaning, viz., companion). Graphio and comes continued in existence together for many years before the complete merging of the former in the latter took place. Each title was used and was recognised. The Frankish official was called graf; the Roman official was called comes. Hence we find that even as late as the time of Charlemagne the title graphio as well as comes is in existence, and we read of duces, comites domestici (officers of the royal household), vicarii (in later days called vice-comites), grafiones and centenarii, all named together, and that so late as the ninth century.

NOTE B.—*Note on the ARIMANNI, RACHIMBURGI, and BONI HOMINES.*

The possession of freedom was the distinctive mark of the members of the old German body, and the basis of the Germanic organization was the class of freemen. What the old German folk understood by freedom was not mere liberty as opposed to slavery, but the complete recognition and enjoyment of rights of all kinds. This view of a man's position in his tribe or clan corresponds with the Roman terms, "caput" and "civis optimo jure." All the original Teutonic invaders claimed their privilege to stand on this ground, but the terms by which each body of freemen was known were different. Among the Lombards Arimanni was the name whereby the ancient freemen of the north were marked, and that name was applied to the female as well as the male members of the race. "*Liberæ fæminæ et arimannæ*" are the words of the Lombard Law of Rachis (see L. Longob. Rothæris 222, cited by Luitprand, iv. 6). Later on, that is at the time of Charlemagne (as a diploma of the year A.D. 808 shows us), the title arimanni had received a meaning somewhat more special. It was

confined to the free Lombards who constituted the national assembly before the introduction of fiefs, *i.e.*, before the era of feudalism, and the term, "*alii liberi homines*," which appears in the same diploma, is used by way of contradistinction to that of *arimanni*, as intended to cover the Roman inhabitants, the German incomers, the Franks, and such free vassals as had acknowledged a lord and were not members of the "*heerbann*" under the comes. Where the term "*liberi homines*" stands by itself in the old documents it must be taken to be identical with *arimanni*, and to mean a free Lombard.

The *arimanni* shared in the administration of justice equally with the *escavini* or *échevins*, and in the later documents the word *germanus* is used, as being synonymous with *arimannus*. This is especially noteworthy in the historical documents published between the eighth and the twelfth centuries.

The term *arimanni* was also applied to the citizens of a town, for these also were freemen. This use of the word does not appear earlier than the beginning of the ninth century. Thus the *arimanni* of Mantua are spoken of somewhere about the eleventh or twelfth century. But the older the document the more precise is the meaning of the term *ariman*, that which I have already given, *viz.*, free Lombards.

From *Arimannus* we get the term *Arimannia*. This term has three significations.

It is used as noting the collective body of the *arimanni* forming a canton or any other community. In this form it is mentioned in Marculf (i. 18), "*Our fidelis comes here to our palace with his arimannia.*"

It was also used as a mark of distinction between full property in land and that which was of an emphyteutic character,<sup>1</sup> or which was of the nature of a fief. In this sense *arimannia* is equivalent to the "*dominium ex jure Quiritium*" of the old Roman law, and it may be taken that it was a proof of freemanship on the owner's part (see as to this, Muratori, t. i. lib. c. p. 725, citing the deposition of a witness in a suit between the Pope and the Bishop of Ferrara in the year A.D. 1182).

*Arimannia* also meant a special kind of tax. That tax was one which the comes of the district was authorized to levy on all the inhabitants of his district, to provide for the general expenses during a time of war.

As to the etymology of the word, Savigny has examined this matter with great care and skill. His conclusion is that the root of the word is "*hari*," "*heri*," *i.e.*, "*heer*," which means the collective body, the people. Hence *arimann* was a man of the people, and whether called *arimanni* or *edelingi*, all to whom either appellation was appropriate are to be taken as the *men* of the whole Lombard body, free in every sense of the term.

As to the etymology and meaning of the word "*Rachimburgus*,"

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<sup>1</sup> A perpetual lease on condition of the regular payment of rent.

there has been much learned discussion, and various opinions have been propounded. I will not dwell on these, but refer such of my readers as may be desirous of examining them, to Von Savigny's learned disquisition thereon (see "*Gesch. des Röm. Rechts. im Mitt.*," I. iv. §§ 60-63).

The conclusions he draws are these :

First as to the etymology of the word ; the root of it may be taken to be "*rek*," which means great, notable, illustrious.

Next as to the locality to which it belongs. This was the country where the Franks settled.

Then as to its meaning. This must be understood as being precisely the same as that of *arimann*. The Frankish *rachimburg* was like the Lombard *arimann*, the freeman, the member of the conquering tribe. The same rights that the *arimann* claimed and possessed, the same did the *rachimburg* claim and possess. Therefore, like the former, the latter, among other privileges, obtained that of being present at the "*mallum*," or public assembly, and of taking part in the public administration of justice. On the complete settlement of the Franks in Gaul two other terms, Latin ones, were applied to the *rachimburgi*, viz., "*liberi homines*" and "*boni homines*," and in time it came about that "*bonus homo*" and "*rachimburgus*" were used by the Frankish historians as identical expressions. Eventually the term *rachimburgus* gave way to that of *bonus homo*.

To sum up the matter then concisely. The *arimanni* were the freemen who, under the Lombard domination, formed the national body of those who were entitled to appear at the popular meetings, and take part in all popular national discussions. The *rachimburgs* were identically the same in that part of Europe where the Frankish immigrants were located. After their complete settlement in Gaul their name was Latinized into "*liberi homines*" and "*boni homines*." The former term designated their position and rights as freemen ; the latter term marked the fact that they were not only free, but were untainted with any charge of crime or misconduct, for this would have disabled them from taking part in the popular assemblies.

#### NOTE C.—*Escavinei and Scabini*.

In this note I propose to give in a condensed form the account of the *Escavinei* and the *Scabini* as drawn by Savigny in his "*History of the Roman Law in the Middle Ages*" (book 1, ch. iv. §§ 68-78).

I use the words *Escavinei* and *Scabini* purposely, in order to mark the fact that there were two separate periods in the history of this class of officials. The *Escavinei* are those who appear in the judicial organization of the Germanic immigrants prior to the era of Charlemagne. The *Scabini* appear under that name by force of the reformation worked by Charlemagne, and after his reign.

Long before Charlemagne's time, and in a comparatively remote period of the history of Germany, the whole body of the freemen, "*rachimbourgs*," or "*boni homines*," took part and stood on an equality in the public administration of justice ; all were, in effect,

"*escavinei*," "makers or establishers of the law" (from the verb *schaffen* or *schöpfen*). The word itself, "*escavineus*," was not used till a much later period as a word of art. It was introduced to express a new idea, that of men who were attached to the retinue of the Comes, as being able to render special assistance in any suit to the main body of the "*boni homines*."

In this sense the word occurs in an ancient document cited in a suit held before Charlemagne, A. D. 781, which ran thus: "Certain parties came before the Comes and his *Escavinei*, and judgment was given on the knowledge and actual approval of the *boni homines* or of their Comes."

We may take it, then, that in the earliest times all the freemen were judges, hearing and deciding on a footing of equality, and containing in their body no members dignified with any special name; but that later on, for some reason which is not particularly noticed, a special title was conferred on certain individuals, and that title was *escavineus* or *échevin*.

Charlemagne, seizing probably on the idea so presented, to wit, a special body of men fit for judicial work, and noting the old term, made use of the idea, but slightly altered the term itself, perhaps to emphasize the fact of his reformation of the judicial system in this part of it.

He selected certain individuals expressly and by name to act as public officials, and entrusted them with the duty of rendering assistance at the ordinary assemblies where such assistance might be needed. To these ordinary assemblies the body of freemen might resort or not, as they pleased. Very often they preferred to stay away. In process of time the business fell into the hands of these selected men, and these men, so selected, were called, by way of distinction, *scabini*. The term *scabini* never appears in any document prior to Charlemagne's reign. After that period it gradually took the place of the old term *escavineus*. From the Frankish portion of Charlemagne's dominions the system of judicial administration by help of the *scabini* was introduced into Italy, and as among the Franks, so among the Italian dwellers, *scabini* were appointed, under royal mandate, by the comes, or by the collective body of the people. Seven *Scabini* were bound to be present and assist at every *placitum* or ordinary public meeting. In Italy the Latin term "*judices*" was applied to the *scabini*. The function of the *scabini* (and this is traceable to very early times, as the Salic and the Ripuarian laws attest) was to decide questions of fact, and to take notice and apply to these questions of fact such points of law as might arise. Their decision was given independent of the president or comes. His sole function was to execute the judgments that were arrived at.

One other ancient set of officials remains to be noticed, but their history is involved in so much obscurity that very little can be recorded of them. I allude to the "*Sagibarones*," of whom all that can be said is that their office was a judicial one, and that they were dignitaries holding permanent office, and ranking on an equality with

the comites or counts. In the laws of the Anglo-Saxon King Ine, Law 6 runs: "If any person shall fight in a church, let him pay one hundred and twenty shillings; if he fights in the house of an ealdorman or a sagibaron, let him make amends with sixty shillings, and pay another sixty by way of penalty." This is Spelman's rendering of the law. Wilkins has the words "illustris sapientis" for the Saxon "gedungenes witan." The word Sagibarones appears in several laws of the Salic Code.

NOTE D.—*Explanation of the terms LEUDES and ANTRUSTIONS.*

The word *leudes* is thus explained by Ducange:—

It meant vassals or subjects. Among the Saxons the word was *leod*; among the Germans, *lieden*, *luden*, *luyden*, and *leute*. The general signification of these words is "men." In the "Wisigothic Law," book iv. tit. 5, § 5, we find: "Inter leudes quicumque nec regiis beneficiis aliquid fuerit consecutus." "They were classed among the leudes, who had not received any concession from the royal benefices." In the "Lex Longobardorum," lib. ii. tit. 22, § 5: "Excepto si leudes id est de Saxo aut Friso, Salicum occident per sexaginta denarios solidus solvatur," "Provided that if the Leudes (that is, Saxon or Frisian) slay a Salian, full compensation (for the homicide) must be paid to the amount of sixty denarii." For a Salian was reckoned as one of the most noble dignity among the Franks. In the edict of Chlotaire II., Leudes and Fideles are classed together. We also read of King Pepin: "Rex Pepinus suos scaritos<sup>1</sup> et leudes suos ad prosequendum warfarium transmisit." "King Pepin sent his select men and his Leudes to carry out the warlike expedition."

Antrustions were of the same quality as Leudes, men who swore fidelity to their head chief or king. The term comes from the German word *Treue*, trust. *In trustee Domini*. In the "Formulæ" of Marculf (lib. i. cap. xviii.) appears the following form (I give the translation of the original): "It is right that all who premise trust and perfect fealty to us should be defended by our countenance. And because this man, who under God's favour is a fidelis of ours, comes here in our palace (*cum sua arimannia*) with his following, and has shown himself ready to swear trust and fealty to us in our presence, therefore, by these presents, we decree and order that henceforth he be recorded and numbered among our Antrustions. And if any one dare to kill him, let that person know that he will be held guilty, and adjudged to pay for his weregild 600 (solidos) shillings."

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<sup>1</sup> *Scarire* means to distribute into parts, *scaras*. *Scaritus* is a man selected or set aside. In an old Capitulary of one of the Charles's appears this: "Id est ut fidelitatem nobis promittunt sicut tunc scarivimus et scriptum comitibus nostris dedimus," "To promise fealty to us, as we have specially decreed and written to our counts."

NOTE E.—On the etymology and meaning of the word *ALOD*.

Pontoppidan (quoted by Blackstone, vol. ii. p. 45), Note *f*, defines it thus: "Alloðh is the transposed form of *Odhal*, the Norwegian name for property rights, derived from *Ohd*, property and *all*." "It is," he says, "the exact opposite of *Feodh*, which is stipendiary property."

Cujacius explains it in this way: "quasi sine lode," *lod* or *lot* being the Teutonic for payment, rent (scot and lot), the owner holding otherwise than as a *Leodis* or vassal.

Budæus derives it from *laudare*, and this from *laudum*, i.e., the decision of an arbitrator. "Hence," says this writer, "it is that allods were not obtained by force of the decision of a judge."

Other writers derive the word from *ohn* and *leida*, *sine subjectione*, free from submission to any one. Spelman says it comes from the Saxon word *Leod*, i.e., *Populare prædium*, as opposed to *Feudum*, which is *Prædium dominicale*. Some writers assert that its root is *ald*, as in *alder*, which means property transmitted to a man by his ancestors. Some find the root in the word *Lod*, onus or burden, and that it means unburdened; and some old writers, with whom M. Guizot agrees, connect the word with the Teutonic word *Loos* (sors or lot), though with somewhat singular inconsistency they thought that alods were not made by distribution or allotment.

The term occurs in a large number of old documents and charters, as well as ancient Laws, Capitularies, and Formulæ, from the time of the Burgundian Code down to that of William the Conqueror. I cite from two early documents:—

1. The "*Acta Normannorum*," book ii. par. 53. I give a translation of the Latin. The king grants "to Rollo and his successors all that land from the river Epte down to the sea, for him and them to hold it as their estate and alod for ever." "Also he gave to the same Duke Rollo his daughter Gisla in wedlock, and the land already assigned as alod and estate."

2. The Charter of William, Duke of Normandy, A.D. 1042:—

"I (the King) have given the land, which Wichol the Bearded held in alod, absolutely free and discharged from all customs belonging to me."

In "*Domesday*" appears this of Warkshall: "The king holds Warkshall; the Countess Garda held it of Count Godwin as alod." And again, "Almar held Colingley of King Edward '*sicut alodium* as allodial,' that is, subject to no service or rent."

## NOTE F.

I take this opportunity of explaining in some detail the two subjects, the Customs of the Salic Land, and the Salic Law, as they are not of themselves connected, at least so far as originating cause is concerned.

The exclusion that is spoken of in the text is an old national custom, applicable to a particular set of people, dependent upon special habits, and independent of regular positive law. Like many other customs, it was worked into form and received the recognition of law in later days, as, for instance, in the Ripuarian Law and Salic Code.

According to a learned foreigner (M. Wiarda), whose opinion is approved by M. Guizot, the origin of the Salic Law is not German. He holds that the Salic Law appeared in writing for the first time on the left bank of the Rhine, upon the territory situated between the Forest of Ardennes, the Meuse, the Lys, and the Scheldt, a country for a long while occupied by the Salian Franks, who were the special subjects of this law, and from whom it received its name. Further, that in none of the texts actually existing does this law appear to go farther back than the seventh century. The only language in which it has appeared is the Latin language, the same language, in fact, in which all the other Barbarian Codes were given out—the Ripuarian, Barbarian, and Allemanian laws: The Germanic dialects, be it noticed too, were not reduced to writing prior to the reign of Charlemagne. Indeed, Otfried, of Weissemburg, the translator of the Gospel, speaking, in the ninth century, of the Frankish tongue, calls it “*lingua inexplicabilis*.”

M. Guizot, in agreeing with this view as to the later date of the Salic law, maintains that it belongs to a period in which the Franks had for a long time existed in the midst of a Roman population, and when Christianity was not a belief with them of recent date.

To whatever period we assign its appearance—much later, it may be, than the earliest Frankish settlements in Gaul—it may fairly be assumed from its contents that there was a large infusion in it of the old customs which had been handed down from generation to generation, and adopted by the Frankish dwellers at the mouth of the Rhine, until at length, towards the end of the eighth century, they became crystallized into law.

Although described as the Salian Law, strictly speaking it is no law at all, nor is it a code. It discusses various matters—political law, civil law, criminal law, civil procedure, criminal procedure,—but without any pretence to method, order, or classification. Looked at closely, it bears more resemblance to a set of penal rules, for crimes and offences occupy the chief place in it. What there is of political regulation makes its appearance indirectly, and as it were by accident, with reference only to customs and institutions already established and accepted.

Such indeed is the character of all legislations in their early stage. It is by the penal rules that nations make the first visible steps; and whether under a religious form or under one purely secular, the penal law is the first to make its appearance in the legislative career of nations. Their earliest effort towards the perfecting of civil life consists in raising barriers, in proclaiming beforehand punishments for excuses of individual liberty of action.

So says M. Guizot, and so affirms Sir Henry Maine, whose words

I cite: <sup>1</sup> "It may be laid down, I think, that the more archaic the code, the fuller and more complete is its penal legislation." We see this in the Teutonic codes, including those of our Anglo-Saxon forefathers, and to this condition of social life does the Salic Law belong.<sup>2</sup>

I cite from the Formulæ of Marculf the form by which a father nominated his daughter to an equal share of the *terra paterna* with his sons. The power thus possessed by the father marks a much later period of time than that when the old exclusive customs in Salian Land prevailed, and indicates the revolution that had taken place therein.

"My dearest daughter, I make this declaration and appointment. By an old custom, that has kept long hold among us, but is a cruel and unjust one, sisters were excluded from any share in the lands of the father with their brothers. But I, deeply weighing this unjust custom, love to think that thou canst have an equal share in my property at my death with my sons, who ought not to be more dear to me, nor to be more largely endowed with fortune than thyself. Therefore, by this my letter, I appoint thee, my dearest daughter, to be one of my lawful heirs, and on a footing of equality with thy brothers, my sons; and I do declare that thou must share in a like manner and on equal terms with them, as well in the paternal alod as in my other possessions, whether purchased or otherwise acquired; further, that thy share be in no respects less than theirs, and that all of you divide and receive, share and share alike, the whole of my substance and effects" (Marculf, "Form.," lib. ii. c. xii.; Append. et cap. xlvii. xlix.).

#### NOTE G.

The following form of grant is taken from the Formularies of Marculf (lib. i. cap. xiv.).

It deserves to be set out at length, for it is not only a good specimen of the legal style in which this kind of grant was formulated, but it shows that hereditary benefices were established facts at the period when Marculf wrote, that is, in the eighth century.

I give an English version of the original document, which runs thus:—

"Of our own will and pleasure we have seen fit to grant to the high and noble (A.B.) the aforesaid vill, situate in the pagus<sup>3</sup> named, with all its belongings in its entirety, as it has been held by him or by our treasury, or as at the present time it is held. Wherefore we declare this our authority, which we direct shall be in perpetuity, to

<sup>1</sup> "Ancient Law," chapter x. p. 363.

<sup>2</sup> For a larger and more detailed examination of the Salian Law, the reader is referred to Guizot's "History of Civilization in France," Ninth Lecture, pp. 451-479.

<sup>3</sup> A "pagus" was the totality of a number of "vills" lying together and not inclosed in walls.

wit, that the above-named personage shall have as a grant to him for ever the said vill in its entirety, together with the lands, houses, buildings, labourers, serfs, vineyards, woods, fields, meadows, pastures, waters, watercourses, and mills, adjacent and appendant, or subject to any control of persons attached to our treasury and dwelling in it; free from all outgoing and from the claim of any judge to enter thereon for the purpose of exacting "freda."<sup>1</sup> To the intent that the above-named (A.B.) may have, hold, and possess it as his own property, without any other legal transfer, to him and his successors, by the favour of God and through our bounty, and may leave its possession to whomsoever he pleases."

Even so far back as the sixth century the custom of granting hereditary benefices was in existence, as this extract from the "Lex Wisigoth" (lib. v. tit. ii. § 2) shows: "When a man who has received a benefice from the prince dies intestate, his property shall go to his heirs in due order of succession in accordance with the law."

#### NOTE H.

The influence of a dream upon the Saxon king, Edwin (A.D. 608) is well told in Bede's "Ecclesiastical History" (bk. ii. chs. xii. and xiii.).

In the course of his adventurous life the king had fallen into his enemies' hands. In the prison to which they had consigned him he had a dream, in which an unknown personage approached him with a grave air, and said: "What wouldst thou promise to him who would and could save thee?" "Whatever it shall be in my power to perform," replied the Saxon. "Well," replied the unknown, "if he who can save thee only requires of thee to live according to his counsel, wilt thou follow him?" "I will," swore Edwin. The apparition, placing his hand on Edwin's head, said: "When this sign shall again present itself to thee, recall this moment and our conversation."

Edwin escaped the danger, but never forgot the dream.

Some time afterwards, as he was sitting alone, he saw a personage enter the room. As he advanced, it seemed to the king that he was like the man of his dream. Without pronouncing a word, this personage advanced and laid his hand on the king's head.

This was Paulinus, to whom, so the ecclesiastical writers say, the Holy Spirit had revealed this means of winning the monarch to the

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<sup>1</sup> "Fredum," *freda*, *fredus*, *fridus*, from "*frid*," Teutonic for *pax*, and identical with "*bannum*," was a fine or composition by which on payment to the treasury a person arraigned for an offence obtained protection for a time from the chieftain. When paid to the royal treasury it was called "*fredum regale*."

The payment of "*freda*" to the treasury is recognised in the *Lex Alemannorum*, the *Lex Baiavariorum*, and the *Lex Frisionum* (see the "*Leges Barbarorum*," by Heroldus), as well as in the Capitularies of Charlemagne. Sometimes the "*freda*" were paid not to the treasury direct, but to the judges (*Lex Salica*, lib. 52, § 4, and lib. 55, § 2).

faith of Christ. Struck with wonder, Edwin fell to the ground. Raised up by Paulinus, he promised to be a Christian, adding that the men of the country should decide what they would do.

At Paulinus's suggestion the Witenagemot was convoked, and there to all the assembly the king recounted his dream and the reason of his change of faith. He asked them all what they thought of the new doctrine. One of them, Coifi, the chief of the pagan priests, spoke at length, adding this at the end of his address: "If upon due examination you shall find that the new doctrines that are preached to you are better and superior to the old, you are bound in common with us all not to delay the adoption of them."

Then rose an old warrior chief and said this: "The life of man on this earth, in comparison to that space of time which is unknown to us, is like to that which may happen when you and your attendants are sitting at supper in the winter season, and when a fire is lighted in the midst, and the room is filled with the genial heat, whilst the whirlwind rages, the rain beats, and the snow falls outside, and a sparrow flutters quickly in at one door and flies hastily out at the other. During the brief period that it is within the room the chill of winter does not touch it; but in an instant the security it has enjoyed in its flight has disappeared; and as you look upon it, it has flashed from the darkness of winter at one door into the darkness of winter in which it disappears at the other. Such too is the brief measure of human existence. We know not what went before, and we are utterly ignorant as to what shall follow. If the new doctrine can make you more certain as to this, then in my opinion it is one that ought to be adopted by us."

Other speeches followed; then Paulinus explained his dogmas, and the assembly, voting as in sanction of national laws, solemnly renounced the worship of the ancient gods. On the proposal of Paulinus, the high priest first, with a sword and brandishing a pike, struck the walls of the temple and the images in it with his lance. A wooden house was erected wherein the king and many of his men were baptized.

#### NOTE I.

I. The military service. This was the principal obligation attaching to the possession of a fief. As to the period of time for which a vassal was liable, this varied. In one fief sixty, in another forty, in another twenty days; but whatever the period, the obligation was absolute. The vassal, on the requisition of the lord, was bound to follow him, sometimes alone, sometimes with such or such a number of men, sometimes within the limits of the feudal territory, sometimes everywhere; sometimes only for defence, sometimes for attack as well as for defence. Then, again, the conditions of the duration of the time varied according to the extent of the fief—one fief would involve a complete service, another only half the service. The variety of conditions and forms of obligation was enormous.

II. The second service due by the vassal to his suzerain, and which

is expressed by the word *fiducia*, was the obligation to serve his suzerain in his court in his pleas whenever he invoked his vassals, whether to ask for their counsels, or take part in the judgment of disputes brought before him.

III. The third service was the obligation to acknowledge the jurisdiction of the suzerain.

IV. There was a fourth, somewhat more uncertain in its extent; viz., feudal aids (*auxilia*). "Aids" were certain subsidies, certain pecuniary assistance which, in particular cases, the vassal owed to the lord. These were of two kinds: legal aids, or assistance agreed on beforehand, imposed by the mere possession of a fief; and courteous, or willing aids, which the lord could not obtain but with the vassal's consent. Legal aids were three in number: the vassals owed them to their suzerain first when he was in prison, and it became necessary to pay his ransom; next, when he armed his eldest son knight; thirdly, when he married his eldest daughter. Sometimes, and during particular periods, extraordinary aids were considered as obligatory; for example, in the heat of the Crusades the obligation was introduced of giving an aid to the lord whenever he desired to go to the Holy Land.

Besides these general services, certain prerogatives were introduced in favour of the suzerain, which, though not primitive and inherent in the feudal relation, in the end became incorporated with it.

1. The right of relief; that is to say, at the death of the vassal the heir had to pay the suzerain a certain sum (*relevium, relevamentum*), as though the fief had fallen vacant by the death of the possessor, and so it was held necessary to raise it again in order to resume its possession. The amount of relief greatly varied, and was the subject of continual dispute and discussion between the suzerain and the vassals.

2. A second right of the same kind was that which the lord generally had, when his vassal sold his fief to another, of exacting a certain sum from the new possessor. In the earliest ages the vassal was not allowed to sell his fief without the lord's consent. As this immobility of fiefs became inconvenient and almost impracticable in civil life, the permission to sell fiefs was soon introduced under one form or another, and on more or less favourable conditions. But on being introduced it gave rise to a claim for the suzerain's profit or right, and for redemption or indemnity at each change.

3. Forfeiture (*foris factura*, putting out) was also a right and a source of revenue for the suzerain. When the vassal failed in any of his principal feudal duties, he incurred forfeiture; i.e., he lost his fief either for a limited time or for life, or even for ever. Here was an opportunity for exaction on the part of the suzerains, who strove incessantly to multiply the cases of forfeiture, and to get it pronounced, even when contrary to all justice; but it was not less a legal penalty—the chief legal penalty of the feudal code, and universally admitted in feudalism.

4. The right of wardship, or of *garde noble*, was also one of the lord's prerogatives. During the minority of the vassal he took the

guardianship and the administration of the fief, and enjoyed the revenue. This right, says M. Guizot, was never generally admitted into French feudalism. It existed in Normandy and in some other provinces; from Normandy it was transmitted to our own country.

5. The suzerain had also the right of marriage (*maritagium*), that is to say, the right of offering a husband to the heiress of a fief, and of obliging her to choose among those whom he offered her. The obligation of military service, an obligation of which a woman could not acquit herself, was the source of this right, which is thus set out in the "Assises de Jerusalem," cap. 242: "When the seigneur desires to summon, as he is entitled to do, a woman who holds an estate of him which owes him body service, to take a husband, he must present to her three men of suitable condition in this way: he must send three of his men—one to represent himself, and two to represent his court, and the one who represents him must say to her: 'Madam, on the part of my lord so-and-so, I offer to your choice three men—naming them—and call upon you, on the part of my lord, by such a day—naming the day—to have taken one of these three for your husband'; and this he saith three times."<sup>1</sup>

The woman could only escape accepting one of the husbands offered her by paying to the suzerain a sum equal to that which they had offered him to have her as a wife, for he who desired the hand of an inheritor of a fief thus bought it of the suzerain.

Such were some of the obligations imposed on vassals and of the prerogatives claimed by lords, odious most of them in themselves to the people, and opening up an extensive ground for exaction and extortion.

We cannot wonder at the hatred that the whole system of feudal tenures and feudal service inspired, or at the eulogistic terms in which Blackstone speaks of the statute by which in England military tenures, with all their heavy appendages, were destroyed (12 Car. ii. c. 24). For by it "the court of wards and liveries, and all wardships, liveries, primer seizins, and ouster lemain, values, and forfeitures of marriage by reason of any tenure of the king or otherwise, were totally taken away, and all fines for alienation, tenures by marriage, knight's service and escuage, and also aids for marrying

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<sup>1</sup> This *maritagium*, or claim of right to give in marriage the vassal's daughter, was sometimes waived by the Crown. Thus in the *Charta pro Cædomanensibus*, given by Phillip Augustus (A.D. 1220), appears this clause (which I translate from the original Latin text): "Moreover, we have granted to the same parties that neither we nor our heirs will give their wives or daughters (that is, after the husband's death) in marriage to any persons against the will and consent of their relations, save only as regards those whose husbands are military tenants, or when the wives and daughters are tenants of a military tenancy (*nisi feodum vel membrum lorice teneant* \*), for here we are in duty bound to follow the uses and customs of Normandy as to *maritagium*."

\* *Feodum lorice* was the same as *fief de hauberk*, a fief held in military tenure. This, on the death of a tenant, leaving only females as heirs, was separated into eight portions, and divided among them. These shares were called *membra lorice*.

the daughter, and knighting the son, and all tenures of the king in capite were done away.

#### NOTE K.—*Feudum*.

According to Ducange, it was the opinion of the writers who preceded him that the word, as a term of art, first made its appearance in the reign of Charles le Gros (about A.D. 884) in the Constitution published by him in respect of the Roman Expedition. "To all who are summoned to arms by this enactment. If any one does not follow his lord to the assembly in the field called Rungall, and appear with his military following, he shall be entirely deprived of his '*feudum*;' those excepted who by their lord's permission shall stay away." The word "*feudum*" is repeated in the same document.

Some authorities maintain that this proclamation is not a genuine document. Be that as it may, the term makes its appearance in other royal decrees in the reigns of Charles the Simple, Rolf and Lothair, but not earlier than any of the reigns above mentioned, that is, than A.D. 844.

The word "*feudum*," which in the ancient Latin documents was translated into "*beneficium*," in its earliest signification meant a property given in recompense by way of pay or reward (for services in the field). It may be taken to be a term of German origin, derived from the old German words. "*fe*," fee, reward, recompense, and the radical "*od*," property, goods, possession. In the later feudal terminology it was equivalent to "*fief*," and then it meant not only the land itself, but the tenure also.

#### NOTE L.

I. "The people occupy settled seats." This word "occupy" marks an important change in social life.

In the time of British life on the island, prior to and even during the Roman domination, there is not much sign of real occupation or settlement. What villages or towns there were at both periods were, as Mr. Green points out, probably modifications of communities which might take, and as may be inferred did take, after awhile a municipal shape, but after all could have been little more than collections of huts, like the Gaulish communities which had risen under like circumstances.

The difference between such communities and the meanest Roman town, as well as between them and the occupation of a settled people, is, as a matter of fact, immense.

Under the Roman rule, no doubt order and settlement followed the steps of the conquering legions, but this was confined very much to the localities occupied and administered by Roman rule.

On the departure of the Romans, intense disorder supervened, and for a long period but little chance of administrative occupation and civilized settlement was afforded.

Therefore, as I say, the establishment of the inhabitants as

settled occupiers marked a distinct and decided forward step in social life.

The settled occupation, it should be noticed, would run very much on the lines of the settlement of the earliest comers. Billings by Billings, Kensing by Kensing, Kennings by Kennings, and so on; and as a mark of the permanency of the occupation and settlement, we have to this day the names of the old Saxon immigrants, Billingsgate, Kensington, Kennington, etc., etc., a foreign immigration that has been one of the chief causes of the making of England.<sup>1</sup>

II. "The land is appropriated to separate townships." There are two matters here that require explanation: (1) the township, (2) the land settlement of the Saxons.

(1) The township, or the tun,<sup>2</sup> has its Latin equivalent in the terms villa, vicus, prædium, territorium. According to Ducange the word comes from the Teutonic word Tong, the hundred; tunginus and centenarius being used in the Salic Code as meaning the same thing: "Tunginus aut centenarius mallum indicent," "In mallo aute T. aut C. ambulent."

The tun gerefa is the Saxon term for the tunginus, the prefect of the tun or villa. This tun or township, which was the unit of Saxon social life, was made up of a cluster of farmers' homes, each set in its own croft. It was surrounded by an earthen mound, tipped with a stockade or quickset hedge, and defended externally by a ditch.<sup>3</sup> Thus each township formed a ready-made fortress in war, and in times of peace its intrenchments were of use in the event of village or house feuds.

Every dweller within them was bound to take part in the securing and repairing of the defences.

Inside the mound lay the homes of the villagers, the farmsteads with their farms and cattle stalls, and in the centre rose the sacred tree or mound where the village with its elders met in the tun-moot,<sup>4</sup> which gave order to their social and industrial life. Outside, and close to the village, were the home pastures and folds, where the calves and lambs of individual cultivators were reared. "Here," says Mr. Green,<sup>5</sup> from whom I am quoting (referring as authority to Nasse), "and in the 'yrfeland' or family estate, held apart from his fellow-

<sup>1</sup> Green, "The Making of England," ch. iv. In Note 1, at p. 188, citing Professor Stubbs' "Constitutional History," vol. i. p. 92, this is said of this terminal "ing": "In England it is probable that all the primitive villages in whose name the patronymic 'ing' occurs were originally colonized by communities united either really by blood or by the belief in a common descent." See, too, Kemble's "Saxons in England," vol. vi. ch. ii. pp. 58, 59, and 234 et seq.

<sup>2</sup> According to Bishop Stubbs, the "tun" is originally the enclosure or hedge, whether of the single farm or the enclosed village, as the "burh" is the fortified house of the powerful man. "Mallum," the greater assembly, in which public causes are discussed.

<sup>3</sup> Kemble's "Anglo-Saxons," vol. i. pp. 301-302.

<sup>4</sup> The probable origin of the village green, which was once a regular appendage to an English village.

<sup>5</sup> "The Making of England," ch. iv. p. 181.

freemen by the ætheling or noble, we find the first traces of a personal property, strongly in contrast with the common holding which prevailed through the rest of the township."

Beyond and around these home pastures lay the village ploughlands, generally massed together in three or four large "fields," each of which was broken into long strips of soil that were distributed in turn among the village husbandmen.

The whole was inclosed by a border-land or mark, which formed the common pasture, where flocks and herds could be turned out by every man to graze, though in numbers determined by usage or by the tun reeve.<sup>1</sup>

In the tun, then, you have the real life of the Saxon people; and in its moot the transaction of all that portion of work went on which is of so much importance to the dweller in a circle of this sort, viz., the every-day work of his life. There the community—i.e., the freemen, for no slave had a place or voice—met to order its own industry, and to make its own laws. There new settlers were admitted to freedom of the township; here bye-laws were framed. Here, too, strife of farmer with farmer was settled, according to the custom of the place; and here the four men were chosen who had to follow either their head man or the ealdorman to hundred, court, or war.

"It was here," says Green, "in these knots of husbandmen, that the men from whom Englishmen were to spring learned the worth of public opinion, of public discussion, the worth of the agreement, "the common sense," the general conviction to which discussion leads, as of the laws which derive their force from being expressions of that general conviction."<sup>2</sup>

I think it will be admitted that any attempt to sketch the history of the development of social life in England would be utterly incomplete without a proper consideration of that part of the fabric which is in truth the foundation of the whole.

(2) From the township and the village moot I proceed to notice the nature and peculiarities of the Anglo-Saxon land system. The subject is an important one for two reasons. First, on general grounds; for, as I have pointed out in an earlier lecture, a proper understanding of the changes that have taken place in the history of land tenures helps on the better understanding of the changes that have taken place in social life. Secondly, because, as you will see presently, there never has been a time—at least during and since the Roman occupation—when the land was absolutely and entirely the property of the community, and when private property in land was forbidden. But a third reason for the importance of the subject may be mentioned, namely, the great change that was introduced into the tenure of land upon and after the Norman settlement here.

As I have already mentioned, the land conquered by the Germanic tribes at the outset belonged to them in common. Hence, among the

<sup>1</sup> Kemble's "Anglo-Saxons," vol. i. p. 42; and Sir H. Maine's "Village Communities," lect. i. pp. 10, 11, 82-85.

<sup>2</sup> "The Making of England," ch. iv. p. 194.

Anglo-Saxons a special denomination was given to a part of the territorial acquisitions of the community, viz., "folc-land," or land of the people. This was the property of the community, separate and distinct from the "gafol-cunde" land, which the Saxon conquerors first distributed among themselves as being at the time enclosed and cultivated.

The "folc-land" was really a reserve of land equivalent to the *ager publicus* of Rome, kept by the State, and unalienable even by sanction of the Witan, although capable of being leased for a term.<sup>1</sup> The condition of things in connection with this reserve of common land was apparently this.

Land, as I have already shown, was with the Franks, as with all the German race, the accompaniment of freedom. Only the freeman could be a holder, and it was by virtue of his rights as a free member of his community that he claimed to possess his holding.

Now in every village the woodland and pasture land were undivided, and every free villager could turn his cattle or swine on to them.

But besides woodland and pasture land, there was meadow land. This, too, was open and undivided from hay-time to spring. When the grass began to grow, and whilst it was growing, this common meadow was fenced off into grass fields, and after hay-time was unfenced and laid open again.

Plough-land was differently treated, for that was allotted in equal shares, both of corn and fallow land, to the families of the freemen, subject to fresh division as the number of claimants increased or dwindled away.<sup>2</sup> It was the freeman or "ceorl" to whom alone this privilege of sharing was granted. The unfree-man, or the "læt," i.e., he who tilled the land which another owned, was excluded.

To all this land was attached the burden of dues to the State. It was all "gafol-cunde," charged with the "gafol," namely, the *trinoda necessitas*, i.e., road-making, wall-making, and militia. To these were added certain local requirements, such as imposts for purveying and posting, as well as rent (very often in kind) payable to the king.

Now if, with the witan's sanction, a grant of "folc-land" was made to any one (and no one could throw it up after receiving it until he had brought three-quarters of it under cultivation), and the state had reserved no rights on it beyond the *trinoda necessitas*, when the conditions of the grant were fulfilled the land became the holder's property. He acquired it as free land; he might stock, lease it out, or sell it, as he pleased; and so he became possessed of land whose name was "boc-land," or deed-land, so called because it was granted by charter or grant, "boc." It was freed from "gafol."

Hence, as we see, not only was private property in land recognised and sanctioned, but it was dressed in a better robe than was "folc-land"; for it was held free from burdens, and unrestricted, so far as

<sup>1</sup> Kemble's "Anglo-Saxons," vol. i. ch. xi. pp. 292, 293, 293.

<sup>2</sup> Sir H. Maine's "Village Communities," lect. iii. pp. 78, 79, 80.

the grantee's power of dealing with it by deed or testament was concerned.<sup>1</sup> Beyond him, however, this freedom did not extend; for the estate was confined to the next generation, and was not allowed to go out of the family, through a sort of entail.

Land might be tied up to almost any extent (especially if reversion to a monastery was in contemplation). "The man who has 'boc-land,' and which his kindred left him, then ordain we that he must not give it from 'mæg-burg' (his kindred), if there be writing or witness that it was forbidden by those men who first acquired it, and by those who gave it to him that he should do so, and then let that be declared in the presence of the king and of the bishop before his kinsmen" (Alfred's Laws, l. 41).<sup>2</sup>

Within his own kindred on the spear side (*i.e.*, the male side), the landowner might devise his lands at pleasure. Still, in the wills of great nobles, a certain preference to sons over daughters, and to elder over younger sons, is perceptible.<sup>3</sup>

III. "The mutual responsibility of the kindred," etc. This is a very important branch of Anglo-Saxon jurisprudence, though by no means free from obscurity. It refers to the system of responsibility by which every free member of the community above twelve years of age was bound, on peril of forfeiture of his *lād*, or right of compensation, or of the protection of his *wer*,<sup>4</sup> to enrol himself in a hundred or *tything* ("teothung"), which should be surety for him, and in case of an accusation against him should present him to justice.

To this effect runs the Law 20 of Knut: "We will that every freeman be brought into a hundred and into a tithing. And that every one be brought into a hundred and into a 'borh,' and let the 'borh' hold and lead him to every plea, *i.e.*, let every one be brought in so as to be under pledge ('borh'), with a surety who shall be answerable for his appearance in any suit."

This regulation, however, did not apply to those who by rank, family connection, or commendation, were exempted from the provisions of this and similar enactments.

Under this system a master of a family was answerable for the misdeeds of his wife, his children under age, his household and slaves, even for damage done by his cattle; in fact, for all and everything subjected to his protection, "*mund*," "*mundbyrd*," or that belonged to him, and whose "*weregild*" consequently fell on him.

Of a less comprehensive character was the reciprocal responsibility of family or kin ("*mægburh*"), as will be seen in the laws of Æthelstan and Ine.

<sup>1</sup> Kemble's "Anglo-Saxons," vol. i. ch. xi. p. 361.

<sup>2</sup> See "Alfred's Laws for Wessex," cap. 41.

<sup>3</sup> On all this matter of the land, its divisions, method of cultivation, its tenures, and transmissible qualities, etc., see, in addition to Green's "Making of England," ch. iv., and the authorities there quoted, Pearson's "History of England," vol. i. ch. xvii. pp. 266-268; but above all, Sir H. Maine's "Village Communities," lect. iii. pp. 78-99.

<sup>4</sup> At a former lecture I explained this and the *weregild* at some length. For more on this topic, see Kemble's "Anglo-Saxons," vol. i. ch. x.

This family or kin responsibility chiefly comprised the obligation of avenging the slain, the protection of minors in the administration of their property, and the payment of half the wergild if one of the *mægburh* (or kindred) committed a homicide and fled from justice; but it carried with it also the right or privilege of receiving the wergild for a slain kinsman, and of this two-thirds fell to the relations on the male side, and one-third to those on the female.<sup>1</sup>

With the development of the Anglo-Saxon States, and the intermixture of that people with Britons and Danes, this legal responsibility, founded on kinship, lost a considerable part of its influence, and other artificial relations or connections took the place of the rapidly decreasing patriarchal customs.

The wealthy lord of the soil, the feudal superior, received all his vassals or subjects under his protection,<sup>2</sup> and took on himself the obligation of presenting them, if accused, to justice, and of paying the wergild of the homicide if he had fled.

On the other hand, the old responsibility which arose out of kin relationship, so far as his vassals were concerned, was now given to the "*hlaford*,"<sup>3</sup> their representative in the state or the hundred. The relations of the criminal also were called on to pay the wergild to him, of which only a part fell to the kindred of the slain.

But even this institution was insufficient for the great number of the freemen who were not included in any of these associations.

As a check to the evils resulting from this state of things, recourse was had to an old, probably an originally military, division of the country into "*tythings*," and in one of these every freeman whose rank and possessions were not in themselves a sufficient guarantee for his good conduct was enrolled.

Every ten freemen formed a *tything*, "*teothing*," and of these one was the chief or "*tything-man*" (the "*tyenthe-heved*" of King Edward's law).<sup>4</sup>

The military character of this formation, which at a later period was merged in the "*watch and ward*" on the public way, was long to be traced. At last even the leader of the men of the hundred, the "*stallere*,"<sup>5</sup> degenerated into the subordinate official, the constable.<sup>6</sup>

<sup>1</sup> See the "Laws of Edward and Guthrun," cap. xiii.

<sup>2</sup> This marks one important social change, the substitution of the feudal notion of lordship and protection for the old patriarchal idea, kin relationship and responsibility.

<sup>3</sup> *Hlaford*, the loaf-giver: see as to this word, Freeman's "*Norman Conquest*," vol. i. ch. iii. p. 86, note 3 (3rd edition, 1877).

<sup>4</sup> See "Laws of Edward the Confessor," cap. xxviii.

<sup>5</sup> *Stallere*: the word "*Stallarius*" appears in the Chronicle of Simeon of Durham (A.D. 1063): "*Eadnorth*, who was '*Stallere*' of King Harold, met him with his array"; and in Richard of Monmouth's "*History of Ely*," who tells of one *Alfgar* the "*Stallere*" attacking the vill of *Estre*. The same author, in another place, calls this *Alfgar* the Constable; and from this *Spelman* thinks that "*Stallere*" and Constable come to be identical in meaning. The "*Stallere*" originally meant Prefect of the stable.

<sup>6</sup> *Lappenberg* (quoting *Palgrave*, vol. i. p. 200, who remarks that "*tything*" and "*ward*" were synonymous in the ancient law), "*Anglo-Saxon Kings*," vol. ii. chs. xx. and xxi. Edition 1884 (Bell & Sons).

It is not improbable that these tythings were at an early period bound for the weregild of their members, and entitled to the same (see "Lex Salica," tit. xiv., xlv., xlv.), from which it may be inferred that for the crime of the murderer, burglar, or ravisher, payment of weregilds was exacted from nine of his fellows.

In the older laws of the Anglo-Saxons, the word tythings is not used. Gild brethren is the term in vogue, as in Laws 27 and 28 of Alfred (A.D. 890).

Who were these gild brethren? Probably the members of "frith-gilds" (peace gilds), such as the ones existing in London in old times, and mentioned in Athelstan's Ordinance (A.D. 930). "Among our 'frith gegildas,' as well eorlish as ceorlish"; probably existing also in other cities and large towns.

But inasmuch as no gild was expected to take on itself obligations for its members beyond its special means of control over them, as would be the case of civic gilds, it is clear that every freeman was not necessarily included in a "gild." Therefore, after Athelstan's reign we meet with various enactments passed to compel every non-exempted freeman to find "borh" (a surety).

This in the southern parts of England was imposed upon the tythings, and was called "frith-borh," and by the Anglo-Normans, "franc-pledge"—sureties for the peace. In Yorkshire the term was "tienmanna-tale." But more upon this institution will be seen in the extracts from the Anglo-Saxon and Norman laws which are dealt with by me.<sup>1</sup>

#### NOTE M.

Θέμις (root Θε, whence Θέω—τιθέω τιθῆμι), natural justice, right, law, duty, a decree, command. Θεσμός, a law, institution, rite, divine as opposed to human law.

Θέμις, that which is established by custom, that which is laid down (and so), awarded.

Δίκη, natural right arising from custom, habit, usage. Homer, *Od.* iv. 691, uses it for custom; Æschylus *Agam.* 911, for privilege, way, manner; Euripides *Medea*, 413, for law, right, justice. Later on it came to be used for the decision of a judge, a lawsuit, a trial, a cause, a penalty. Homer uses it in the plural for righteous judgments in the hands of monarchs.

Νόμος (from νέμω, to apportion, to distribute, to allot), means strictly anything assigned or apportioned; then it was extended to mean all that becomes law by usage or custom; and then a law, or ordinance.

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<sup>1</sup> As to this subject of "gylde," or gilds, as exhibiting the past idea of an urban community in the earlier days of the Saxons, see Kemble's "Anglo-Saxons," vol. ii. ch. vii. pp. 509 *et seq.* See also further on at p. 430.

NOTE N.—*Ine's Laws.*

I desire to draw attention to two points in connection with Ine's laws, and I do so in the shape of a note. One is (and I have already alluded to it) that the word Ealdorman appears for the first time in any of the Saxon laws up to this date, and that it is only from Ine's time that the institution of Ealdormen can be traced with any certainty. The other is an explanation of the term *Gesith-cundman*.

For the origin of the "*Gesith*" we must go back to a period much earlier than the Anglo-Saxon immigration. It is in one portion of old Teutonic life that we get the first idea, I mean in the "*comitatus*,"<sup>1</sup> or troop of chosen youth, who, from the birth or services of their fathers, were allowed to surround the prince's person, and take rank in the tribe as his "*comites*," or followers.

In itself, the position of the comes was inferior to that of freeman, but from the opportunities afforded him of distinction on the field of battle, and of obtaining rich rewards for deeds of valour, as well as from the fact that he was not only the chosen follower of the chief in war, but a distinguished attendant of his household or court in time of peace, the comes outstripped the freeman in the race for place and power.

On the settlement of the Anglo-Saxons in Britain this, with other Teutonic institutions, continued; but as in other classes of the invaders, so in this, the old names were lost, and new ones took their place.

The freeman was called *ceorl*;<sup>2</sup> the born noble was called *eorl*, and the comes, or comrade, was known by the term *gesith*, the word being derived from "*sithian*," to journey,<sup>3</sup> and signifying "*comes itineris*."

In time, but certainly a good deal later than Ine's day, the term *gesith* itself disappeared, and the title *thegn* (or *thane*) took its place. Then the comes or follower became a servant or minister (*thegn*), raised into the rank of a noble when, through service to royalty, he gained such promotion. So his prior dependent and imperfect freedom<sup>4</sup> was converted into a loftier state, that of noble by service.

As Mr. Kemble points out, the *gesithas* played an important part in Anglo-Saxon history. They were the nucleus of a standing army, the means and instruments of aggrandizing the king's power. As an armed force composed of tried warriors, the favour or friendship of some one or other more powerful soldier among them was an object of consideration to a large part of the community.

Thus the *gesithas* grew in strength and wealth, supported by royalty on the one hand and courted by the weaker members of the district on the other. Even in early days the *gesith*, unfree though he might be, stood above the simple freeman in the matter of the

<sup>1</sup> Tacitus, "*De Mor. Germ.*," xiii. xiv.

<sup>2</sup> The *ceorlish* man of Ine's law is the same thing as "*ceorl*."

<sup>3</sup> The Frisian law books speak of the "*sithar*" as the companion of the judge. See Lappenberg, vol. ii. ch. xix. p. 387 (Bohn's Library edition).

<sup>4</sup> See Kemble's "*Anglo-Saxons*," vol. i. ch. vii. pp. 173 174.

pecuniary value of his life. His weregild was triple that of the ceorl. Then, as Ine's laws show, in addition to that he was able to own land, and so he became a gesith-cund- man, and later on a sax-hynde man, ranking in the second class of the free. Finally, as I think I have stated elsewhere, the gesithas rose in power and importance. The highest offices in the country were conferred upon them by the crown, the class of nobles by birth became absorbed in that of nobles by service, and the old comites, transformed into gesiths through the agency of the principle of commendation, rose to the position of mediate lords, whose real leader was the crowned head of the realm.<sup>1</sup>

#### NOTE O.

As this thegn class played an important part in the history of Anglo-Saxon England, it is right that I should state at some little length how the order was brought by Alfred into a more distinguished position than that which it had occupied before his reign. The thegn (tegn, thainus, tainus) was originally a servant, then he was a person who became noble by service with a superior, and eventually, before the Conquest, his social position was nearly the same as that of the knight in later days. Now, as I have already explained in an earlier lecture, the division of the people in the earliest Saxon times was that of eorls and ceorls; the eorl being a nobleman, the ceorl (churl) being a freeman who was not noble (at a later period degenerating into a villanus, an unfree dependent, a *nativus* or *rusticus*). In the old days of constant warfare, and of its consequent destruction of property and impoverishment of the inhabitants, the free ceorl had suffered as much as any class. Too weak to resist the attacks of powerful invaders, he was forced to seek for protection by putting himself under the help of a stronger man, and this he did by commending himself to a thegn, whose armed aid and protection was given in return for the ceorl's undertaking to follow his new lord as his "man" to the field. Again, as lands were wasted by the Danes, they were re-peopled by the rural nobles, who, placing settlers on them, gave them cattle and implements of culture, receiving in return service from the recipients. Now the result of all this was that the class of free ceorls became almost extinguished, while the bulk of the landowners were thegns, varying in degree and position—king's thegns, afterwards in feudal times barons; middle thegns, afterwards county knights; and lesser thegns, all who possessed "soke," or private jurisdiction on their own lands. Thus the thegns grew in strength and numbers, and rose to such importance that to attach them to his standard was an object of consideration to the king. Alfred seized on the idea of making use of the body for military purposes, and by his skill it became the nucleus of a new military

<sup>1</sup> See on this subject, in addition to the authorities referred to, Hallam's "Middle Ages," vol. iii. note iii. to chapter viii. pp. 357-361. Pearson's "History of England," vol. i. ch. vii. pp. 113, 114; and Freeman's "History of the Norman Conquest," vol. i. ch. iii. pp. 87-90 (3rd edition, 1877).

system. Moreover, he stirred the ceorls into life by holding out to them the hope of rising from their inferior condition of churldom into the better one of thegnhood by a law which appears in the written code of his son Eadward. Shortly stated, what he did was to subject all owners of five hides of land to thegn service. He then divided the whole country into military districts, every five hides having to send an armed man at the king's summons, who was to be provided with victuals and pay. Each borough was rated at one or more such districts, and sent its contingent of from one to twelve soldiers. Two objects, therefore, were kept in view by this system. One, that of establishing a proper military force for the protection of the country; the other, the infusion of a spirit of patriotic emulation by holding out to every freeman the hope and desire of raising himself in the social scale.

NOTE P.—“*An ox's bell, a dog's collar, and a blast horn.*”

This law, as it stands, is not altogether easy of comprehension, and as some explanation of it is needed, I here give it. The first point to notice in it is the illustration it affords of one part of country life of England at the time. At a date when much of the old Teutonic form of proprietary relations was still in existence, and when the wealth of the district consisted mainly of herds of cattle and of swine, we must imagine the members of the community who inhabited the villages using the common mark or waste as pasture ground for their herds.

Large in extent—and stretching away in many places into the wild deep forest and woodland—as was this waste, the risk the owners ran of losing their beasts and swine was no small one.

To avoid this, something that should give notice of the direction in which these beasts had strayed, an animal to keep them together and follow them when straying, and a note or call with which the beasts might become familiar and to which they would return from their wandering, was absolutely necessary.

An ox's collar for some of the leading beasts, with a bell on it, a dog's collar, with the owner's name or mark, and also with a bell on it, and a blast horn, enabled the herdsman to discover the whereabouts of his charge, to drive them homeward and to call them to him.

These instruments were absolutely needed and almost sacred. Hence a theft of any one of them was an offence that required a punishment that would be certain and defined. The penalty, therefore, was a fixed one—a shilling, no small sum in those days.

But a question may be asked, why, if the offence of cattle-stealing was looked upon in this primitive society as a very high one (and this we know was the case), should not the theft of articles that were absolutely necessary for the proper custody and care of the beasts be more severely treated.

The answer is, that in these old times a great distinction was made in respect of the character of the offence of stealing. A bold, open,

and manifest theft was not regarded with so much disfavour as a secret one.

In stealing any of these three articles enumerated in the law, a man was taking something that proclaimed itself, and so each of them was reckoned or looked upon as an informer ("melda").

Therefore, however intrinsically valuable each article might be, the penalty was independent of that value; while on the other hand, however poor and commonplace was each article, still the price remained the same, viz., what, by the terms of the law, it was declared to be worth.

A similar principle appears in other parts of the old Saxon laws on the subject of torts and offences. Thus, in one of Ine's laws, c. 43, an axe was declared to be a "melda" (an informer), because of the noise it made in felling a tree, and therefore it was enacted that "if any one fell in a wood a good many trees, and it be afterwards discovered, let him pay for III trees each with XXX shillings. He need not pay for more of them, were there as many of them as might be, because the axe is an informer, not a thief." "But," as the same law runs, "if any one burns a tree in a wood, and it be found out against him who did it, let him pay the full 'wite' (that is, the fine to the reeve as for a public wrong). Let him give LX shillings, because fire is a thief." The act of burning is noiseless and secret, like the act of a thief, but the act of felling is loud and tends to attract notice.

#### NOTE Q.—On the ORDEAL and the DUEL.

From the preamble to Ethelred's laws and from Chapter I. we have evidence that in his time, A.D. 980 to A.D. 1016, the ordeal was one of the methods in use for preserving the faith or peace of the district. I propose to explain this mode of testing the innocence of an accused person.

Ordeal (*ordalium*) is a Saxon word signifying a great judgment, and in very early times this mode of purgation was a recognised institution.

It was a well-known custom, traceable back for many years, to give an offender who, on arraignment, pleaded not guilty, the choice of the two forms of trial. He might put himself on God and the country by the testimony of twelve men, or he might put himself on the judgment of God alone—the presumption in the latter case being that God would always deliver the innocent.

By the judgment of God the ordeal was carried out in two ways—one by water, the other by fire.

The ordeal by fire was reserved for freemen, and those who were of a better condition; that by water was kept for bondmen and rustics.

In the ordeal by water, either cold or hot water was used. If cold water was selected, the innocence of the party essaying the venture depended on whether his body was not borne up by the water contrary to the course of nature. His thumbs were tied to his toes, and in this posture he was thrown into the water. If he swam in it, he was considered guilty; if he sank, he was declared innocent.

In hot water the accused had to thrust his bare arm or legs into boiling water. If he brought the limb or limbs out unhurt, he was taken to be innocent; if they were hurt, he was judged as guilty.

They that were tested by the fire ordeal had to pass, bare-footed and blind, over nine hot, glowing ploughshares, or were compelled to carry a hot, burning iron in their hands. In this latter case the iron varied in weight according to the degree of the offence. If it was of one pound weight, the term applied to the test was "simplex ordalium;" if of two pounds' weight, "duplex ordalium;" if of three pounds' weight, "triplex ordalium" (the single ordeal, the two-fold ordeal, and the three-fold ordeal).

If the party accused performed the fire ordeal unhurt, he was taken to have given proof of his innocence.

For each of these three ordeals the ceremony was as follows:—

For three days before the trial, whether by water or fire, the culprit was to attend the priest, to be constant at mass, to make his offering, and to sustain himself on nothing but bread, onions, salt, and water. On the day of trial he was to take the Sacrament, and swear that he was not guilty of or privy to the crime charged against him.

In the fire ordeal, the fire by which the iron or the ploughshares was to be heated was lighted in the church. After it was lighted no man was to enter the church save the priest and the accused, until either the iron or the ploughshares had attained the proper amount of heat. Then, from a stake which was fixed in the church, a distance of nine feet was measured out, each foot corresponding in length to the foot of the accused. When all was ready, an equal number of men, twelve persons on each side for the accuser and the accused, were to enter the church and to stand along on both sides of the ordeal, all fasting. The priest then sprinkled them with holy water, which they also tasted. Then they had to kiss the book, and to be signed by the cross. During the whole of this time the fire was not allowed to be mended, but the iron or the ploughshares remained on the coals till the last collect was finished. Then the iron was placed on ten staples which were to sustain it, or the ploughshares were laid at certain distances on the ground. The accused then started on his trial, carrying the hot iron or walking upon the heated ploughshares over the nine feet space mentioned. During this time nothing was to be said but a prayer to God to discover the truth. At the end of the nine feet the accused threw down the iron or ceased walking. Upon that his hand or his feet were bound up in a bandage, which was sealed, and kept so bound for three days. At the close of that time the seal was broken and the bandage removed. If it was seen that the limb or limbs were hurt, the accused was declared guilty; if not, he was acquitted.

From all this it may be surmised that the ordeal was not so terrible as one might at first sight suppose it to be.

Independent of the chance of collusion between the accused and the priest, there was ample opportunity given to the former for preparing for the trial by the application of remedies useful for hardening the epidermis of the hand or feet. Then again, a good constitution, a

careful preservation of the air from the members affected, and a rapid walk over the small space of nine feet might very well tend to keep off any signs of damage severe enough to outlast three days.

It is not to be wondered at that, before the thirteenth century had closed, such an absurd form of procedure as the ordalian test was condemned in England; and that by enactment of Parliament in the reign of Henry the Third trial by ordeal was totally abolished.

I have now to speak of trial by the Duel.

The introduction of this method of settling disputes is the only real change in the legal system of England attributable to the Conqueror on his accession to power, if we except his ordinance respecting the separation of the civil and the ecclesiastical courts.

Wager by battle is an ancient Teutonic custom, and is to be found as a well-recognised institution in most of the old Teutonic Codes.

It was entirely in accordance with the primitive notions of the early Teutonic tribes. It followed the principle that had always been an admitted one, of the right of private warfare. It was, however, an improvement upon that, for it forced the parties who were immediately concerned in the matter to bring the settlement of their feud into the light of day, and so it tended to get rid of the worst form of revenge for wrongs inflicted—secret assassination.

Like the ordeal it was called the judgment of God, and was represented as an appeal to, and an acknowledgment of, the unerring wisdom of Providence.

In the originating idea which gave it a position among the customary forms of procedure in use in early times, wager by battle was not so absurd a method of settling disputes as a more advanced civilization rendered it. It had this advantage, that it substituted one conclusive trial of strength between two representative champions for a succession of murderous acts of vengeance committed by the private members of an offended tribe, and it compelled the rival parties to bring their quarrel to a public legal issue, for the result of a combat, like the result of a trial at law, was that the side that suffered defeat, was forced to submit to a verdict at law. Thus it happened that wager of battle placed some restriction on the fiercer practice of private feud. Again, as the mode of deciding the dispute or disposing of the charge had a semblance of legality about it, and as the result received the sanction of a legal judgment, wager of battle, or trial by the duel, as it was afterwards called, helped to settle in the minds of the community a belief in the advantages of legal forms. Nor was it without some marks of a rational reliance on testimony and vouchers for truth in respect of the matter in dispute. It was never awarded without the oath of a credible witness, who would venture his life in the duel for the truth of what he swore. The champion of the demandant was always one who could be a fit witness, at least, in a suit for land. Therefore the demandant, in civil suits, himself could never engage in the combat, though the defendant or the tenant might fight either in his own person or by that of another.<sup>1</sup>

<sup>1</sup> "I am ready," said the party litigant, "to prove it by my freeman (A), whom

When the Conqueror introduced and established the trial by duel, it was intended to be applicable only to criminal accusations. For civil causes this mode of settlement does not seem to have been introduced by special law, though, doubtless, after the opening was made for it by William's enactment, it was not long before it began to be resorted to in the matter of civil suits, especially those about land. Between the time of the Conqueror and the reign of Henry II., the trial by duel maintained a strong hold in the legal system of the country; but on the introduction of the assize by the latter monarch that hold became weakened. Gradually it fell out of repute, and Glanville gives us a good legal reason why this should be.<sup>1</sup>

## NOTE R.

In this note I give an explanation of some of the terms employed in Domesday book, of the measures of land, and of the money and coins in use at the time of the survey.

I begin with the word "villein."

The word comes most probably from "villa," vill. It represented at a later date the inhabitants of the out portion of a parish in which there were a few houses.

Coke (Coke-Littleton, I. fol. 115 b) thus defines vill: "A vill is formed of several adjacent buildings (mansionibus), where several inhabitants are collected together."

"Villanus" in Domesday is the latinized expression for the old Saxon "ceorl." In one of Eadmund's laws (*circa* A.D. 943) appear these words: "Præpositus; vel thainus; comes; vel villanus," which may be translated as "The reeve, or the knight; the earl (gesith) or the ceorl."

As I have mentioned in the text of this work, the "ceorl," even before the Conquest, had been gradually falling from his old position. After the Conquest he had lapsed into a condition of villenage.

The slave, on the other hand, whose state prior to William's victory was of the vilest and most miserable quality, after the Conquest ceased to be regarded as a mere chattel, and by degrees rose to the position of villenage.

At the period of the Domesday survey, the villein was practically the cultivator of the lord's private demesne. He held a parcel of it by tenure of service on the estate, paying for the land he so held a customary rent in labour.

This in time was commuted into a money payment, and even in old days, as Domesday shows, some few villeins<sup>2</sup> held by a fixed money rent like the modern farmer. Others there were (boors) who

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his father on his death-bed enjoined by the duty he owed him, that if at any time he should hear of a suit for this land, he would hazard himself in a duel for it, as for that which his father had seen and heard." (Reeves's "History of English Law," vol. i. ch. ii. p. 82).

<sup>1</sup> Glanville, lib. 2 c. 3.

<sup>2</sup> Termed in Domesday "censarii," "censores," and "censorii."

had no land of their own, but worked on the lord's demesne, like the labourer of later days.

As a rule, the villein could not leave his holding, but then he could not be driven from it so long as the services or dues were rendered or paid; and in cases where his labour-rent had been fixed by custom, it could not be altered at the lord's caprice or will.

The "colibert," *i.e.*, the "sokeman," might go if he chose; but if he did, his land lapsed into the hands of his lord.

The services rendered by the villein (where his rent was not in money) were numerous and varying in quality.

To ride among his lord's retainers as one of his following; to go at his lord's bidding where ordered; to keep head-ward at nightfall over the manor, or horse-ward over its common field; to hedge and ditch about the demesne; or to help in the chase and make the deer-hedge, were among the services by which the villagers held these lands. In addition to these they were bound to give their labour one day a week on the lord's land, and to work for a month in harvest.<sup>1</sup>

From a political point of view the villein could not be called free; he had no share in the general citizenship, for his lord was his representative in the hundred-moot or the shire-moot. Yet practically he was free; and in this respect he was superior to the slave or theow, who under Saxon law was a mere chattel, subject to his owner's caprice, and liable to be sold as the owner pleased. But, as I have already stated, the Conquest introduced a new range of sentiment with reference to him.

I have spoken of the gradual degeneration of the villein as to status and rights. Littleton (chap. ii., sect. 172) notices the low condition into which many of the villeins had fallen in his time.

He makes a strong point of the distinction between villeins proper and some freemen, who held, according to the custom, of a manor. "Their tenure," he tells us, "is called villenage, and yet they are not villeins."

In commenting on this passage, Coke (citing the old authorities, Bracton, Brittan, and Fleta) points out the dual character of tenure in villenage in his time. In one of them, the person of the tenant was bond and the tenure was servile. In the other, the person was free though the tenure was servile. This shows the change for the worse in the political and social condition of villenage that resulted from the Conquest; for at the date of the Domesday survey, it can hardly be said that the villein was bond. Had he been so, it is difficult to understand his admission into the conference apparently on an equality with the other members of the inquest. Probably we may ascribe to the aristocratic character of feudalism this decline in status of this class of the men of England.

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<sup>1</sup> Green's "Conquest of England," ch. vii. pp. 329-331. See further as to the "villeins" of England at the time of the Conquest, Freeman's "History of the Norman Conquest," vol. v. ch. xxiv. pp. 476-479.

We meet with the term "cotarius" in Domesday. The word comes from "cot," a cottage. These persons were much the same as the older "coscets." They were men who had a free socage tenure, and paid a "ferm" or rent in provisions and money, with some customary service added.

Akin to this class was that of the *bordarii* or *borduarii*.<sup>1</sup> Their position, however, was somewhat superior to that of cotters or coscets, for they were boors holding a little house, bigger than a mere cot or hovel, and having some land of husbandry as well.

"Drenchs," also spoken of in Domesday, were free tenants of a manor—freeholders. They are called in the same book, "taini" or "taini mediocres," and sometimes "milites regis."

The "freemen" of the inquest were all those who, prior to and immediately after the Conquest, occupied a position above the socmen class. They were such as owed no suit or service save the ordinary dues and the *trinoda necessitas*.

In later days, and after the feudal doctrines had gained complete hold of England, they were those who owed knight's service. Under the later Norman or feudal rule, the doctrine as to service was this: every tenure which was not tenure in chivalry was held to be tenure in socage. The test was, how it was held. If by homage and uncertain service, it was chivalry tenure. If by service certain (*i.e.*, fixed, in lieu of service of all kinds), whether accompanied with fealty, or homage and fealty, or homage only, it was socage tenure.

The "socmen" of Domesday (known also as Radmans<sup>2</sup>) were the inferior landowners, who had lands in the "soc" or franchise of a great baron, or in Saxon days of a thegn.

They were privileged villeins, descendants probably of the "ceorls," whose degradation had been, as I have said, slowly going on, but who, from father to son, had been allowed by their lords to remain on their holdings, until at length they had acquired a permanent and legal interest, not unlike the interest of the copyholder of a later date, and equal to that of a freeholder with this exception, that their right of alienating the land was not recognised or even thought of.

With the fall of the free ceorls, the rise of the thegn class, as I have mentioned in the text, is a noteworthy fact. The king's thegn, the baron of later feudalism; the middle thegn, who afterwards became the country knight; and the lesser thegn, that is, the man who possessed soke or private jurisdiction within his lands, were all established personages some time before the Conquest was achieved.

It was to this extension of thegnhood, and to the growth of the sokes or private jurisdictions, that the socmen class of freeholders

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<sup>1</sup> The word comes from the old French word "borde," and so in old French "bordelage," *i.e.*, a base or servile tenure. For a learned note on the word "bordarii" as used in Domesday, and for the meaning of the word, see "Domesday for Kent," by the Rev. L. B. Larking, M.A., notes p. 167.

As to later legislation in respect of "Cottages and the inmates thereof," see 31 Eliz. c. 7, and Coke's reading thereon, 2 Inst. ff. 737-740.

<sup>2</sup> From "rad" or "rede," firm, stable.

seem to owe their origin. And if, as Bishop Stubbs ("Constitutional History," i. p. 214, etc.) points out, it is probable that, save in a few special cases, grants of *sac* and *soc* were, before the Conquest, exemptions from the jurisdiction of the hundred-courts, exemptions that increased as time went on, we must look upon the socmen of England as a privileged set of tenants, well established throughout the country when the Domesday inquest was held, and Mr. Somner's suggestion as to the etymology of the word *socage* is therefore more consonant with the history of this class of tenants than that of Littleton. *Socage*, says the former, comes from the Saxon word "*soc*," liberty or privilege. *Socage*, says the latter, comes from the word "*soca*," which is the same as *carruca*, or plough.

According to Somner, *socage* tenants were privileged tenants. According to Littleton, they were tenants owing agricultural service to their lords.<sup>1</sup>

That the socmen were at the time of the Conquest privileged tenants, owing fixed and determinate services; that they could not be compelled to relinquish their tenements at their lord's will, and therefore that they were looked upon and recognised as free, may, I think, be taken to be undoubted facts.

We meet with the word "*cnicht*" in connection with an old institution to which I am about to refer, whose name at least had survived down to the period of the Conquest.

The *cnichtengild* (or *gild of cnichts*), a sodality of young nobles (so says Kemble), shows the existence of a set of men who, if noble in old Saxon times, do not appear to have retained that distinction.<sup>2</sup>

The *cnicht* of later days seems to have been a man who had served as an armed attendant on the king, or perchance on some great lord; so he was looked upon as a personage of honour and repute in his particular locality.

I draw attention to this class of men for the purpose of saying a few words about one of the oldest of our English institutions. I refer to the "*Cnichten-gild*," whose burghers' club existed in Canterbury, in Nottingham, and in London long before the coming of the Norman.

I have spoken in another part of this work of the Saxon *gilds*. To what I have there said I would add this remark: It is to the constant and determined tendency of the burgh or town *gilds* towards unity of purpose and unity of action that municipal life within our English boroughs owes its power of steady development. By this unity and union our towns have passed from a mere collection of brotherhoods to organized communities.

This is another debt of gratitude England owes to the Saxon *frith-gild* system. Now, among our ancient *gilds*, next to the *frith-gild* none is of older birth than the *cnichten-gild*. Indeed, Madox is

<sup>1</sup> See Coke, Littleton, 1 Inst. lib. 2, ch. v. sects. 117 and 119, f. 856, note 1.

<sup>2</sup> The word occurs in Bede, "*cnichtas and geonge men*" ("*Bedæ Eccl. Hist. Gentis Anglorum*," lib. iii. cap. 18). Hickeys (*Diss rt.*, ep. p. 20) tells us of a *gild of thegns* at Cambridge whose rules he sets out. The members of the *gild* were called *cnichts* and *gildmen*.

inclined to date its origin earlier than that of any other gild. He says "that the English enichten-gild of London is the most ancient that occurs to his memory." On this point Mr. Green is disposed to differ from him, placing its institution at a later period than that of the frith-gild; and as to this Mr. Green's opinion appears to be the correct one.

Be this as it may, the enichten-gild is, beyond all doubt, of great antiquity. This enichten-gild of London takes its place at an earlier date than any other special gild we know of now. It was endowed with land and adorned with privileges. The land and privileges were retained for some time, but eventually given and granted by the men of the gild to the canons of the Holy Trinity of London, and with that gift and grant the gild apparently ceased to exist. That grant was confirmed by King William and his two successors.

Whether this enichten-gild of London was of a religious or secular character is not quite clear from doubt. Stow thinks it must have been secular, and speaks of the men of the gild as having been given to display feats of arms.<sup>1</sup> After a time, Stow goes on, the members of the gild were burgesses of London.

Madox maintains that it was a secular gild, partly because of its name, *enichts*—that is, young men,—and partly from the very fact recorded of the gild, viz., its own grant to a religious house.

One word more about all these gilds in connection with the change of political and social ideas consequent on the Conquest.

Not long after that event, the character and position of all gilds, whether religious or secular, were materially affected.

The rule was established that no gilds could be legally set up without the license of the king. If any persons erected a gild without warrant, *i.e.*, without the king's leave, it was a trespass, and all persons so acting were liable to be punished; and in the twenty-sixth year of Henry the Second, several gilds in London were amerced to the crown as "*adulterine*," *i.e.*, set up without warrant from the king; among them the gild of Goldsmiths, of which Ralph Flael was alderman.

"Peradventure," says Madox, "from these (old) secular gilds, or in imitation of them, sprang the method or practise of gildating and embodying whole towns; and so perchance it came to pass that the name and office of alderman was brought into towns, cities, and boroughs."

From this explanation of some of the persons and classes of persons referred to in Domesday, I proceed to notice the different kinds of land there spoken of. King's-land (*terra regis*), in-land, thain-land, and reve-land require some few words of comment.

The king's-land, or *terra regis*, of Domesday is thus described by a learned and accurate authority: <sup>2</sup>—

<sup>1</sup> Probably, suggests Madox, Stow was induced to form this opinion from the word "*enicht*." See the grants referred to in the text, set out in Madox's "*Firma Burgi*," pp. 23 and 24, notes i and k.

<sup>2</sup> Allen's "*Inquiry into the Rise and Growth of the Royal Prerogative in England*," p. 160.

"It was derived from a variety of sources. It consisted in part of land that happened at the time of the survey to be in the king's hands by escheat or forfeiture from his Norman followers. It was constituted in part of the lands of Saxon proprietors, which had been confiscated after the Conquest, and had not been granted away to subjects. But it was chiefly composed of land that had been possessed by the Confessor in demesne or in farm, or had been held by his thegns and other servants. Of the last description, part was probably the private boc-land of the Confessor, which had belonged to him as his private inheritance. But if we compare the number of manors assigned to him as his demesne lands in Domesday with the estates of boc-land possessed by Alfred, it seems incredible that the whole should have been his private property. A great part must have been the folc-land or public property of the state, of which, though the nominal proprietor, he was only the usufructuary possessor, and with the license and consent of the witan, the distributor on the part of the public. The land which is called *terra regis* in the Exchequer Domesday, is termed in the original returns of the Exon Domesday demesne land of the king, belonging to the kingdom."

"In this matter," as Professor Freeman tells us,<sup>1</sup> "the advice of the witan could not fail to become formal. The folc-land, ever growing through confiscations, ever lessening through grants, gradually came to be looked on as the land of the king, to be dealt with as he thought good. The land which was practically the land of King Edward, became as a matter of course (without any change formally enacted) the land of King William."

Tain-land, or, to use the later form, tain-land, as the name implies, was in old Saxon days the expression for land assigned to the thains by grant or charter, and so it became bocland.

In the time of Edward the Confessor, tain-land was land which belonged to a private person (a *tainus*).

The same process of conversion that, as I have shown, had affected the ancient folc-land of England affected tain-land also, and at the date of the Domesday survey a good deal of this tain land had become annexed to the *terra regis*.

As Domesday for Herefordshire shows us, the conversion of tain-land into reve-land is visible in a district of that county. "*Hæc terra fuit tempore Edwadi tain-land, sed postea conversa est in 'reve-land.'*"—"In Edward's time, this land was tain-land; since that period (probably in Harold's reign), it has been converted into reve-land."<sup>2</sup>

In Domesday we meet with various latinized forms of our word house—such as *domus*, *haga*, *mansio*, *mansura*, and *manerium*.

<sup>1</sup> "William the Conqueror," ch. iv. p. 132. See also Laprenberg, "The Anglo-Saxon Kings" (Bohn's Edition), vol. ii. ch. xxi. p. 399.

<sup>2</sup> "Terra," says Sir H. Ellis, "when put simply (that is, when it stands alone, without any qualifying word), uniformly signifies arable land as distinct from wood, meadow, and common pasture." (See Ellis's "Introduction to Domesday," vol. i. p. 195.)

Of these terms, *haga* appears to be restricted to the meaning of house in a burgh or town. Between *mansio* and *mansura* there is frequently no difference, each being used for house or dwelling-place. Sometimes, however, *mansio* is applied to the dwelling-place, whilst *mansura* is used to denote not only the house, but also the house with land attached to it, and occasionally the land where a house once stood.

In Domesday for Dover most of the houses are spoken of as *man-suræ*, and in respect of two of them the owners were only possessed of half of the land attached to them. In Canterbury all the houses are called *mansuræ*.

In Domesday for Cambridge, Hereford, Huntingdon, Lewes, Shrewsbury, and Warwick, the word used is *mansura*. For Gloucester, Lincoln, Oxford, and York, *mansio* is the term employed. For Chester *manerium* appears. The houses in Arundel (*Castrum Harundel*), Guildford,<sup>1</sup> and Wallingford are called *hagæ*, and in Bridport, Dorchester, Exeter, Shaftesbury, and Wareham, the word *domus* is used.

The *manerium* of William's day and of Domesday must not be confounded with the manors of the later copyhold system.

The word was in vogue in the early feudal times, and by the feudists it was identical with their use of the word *villa*.—that is, an estate in a country district, having buildings on it suitable for the storing of crops. *Manerium* also meant in their terminology a dwelling-place, with a certain amount of land attached to it. Further, it was also applied to the feudal mansion itself.<sup>2</sup>

Manor in the later English law obtained a larger signification. It grew out of the royal grants that after the Conquest were made to the barons, or other men of eminence, of lands, for them and their heirs to dwell upon and exercise jurisdiction, in return for services and yearly payments.

A recent article on the subject of "Early Landholding and Modern Land Transfer," by Sir Frederick Pollock, Bart., is a valuable contribution to the history of the subject on which I am now engaged.<sup>3</sup>

Our old manorial system, at the time of and subsequent to the Conquest, is so well described, and the composition of the manor long prior to its later form under our copyhold tenure is so carefully sketched, that I cannot do better than recommend my readers to turn to Sir Frederick's paper. I will only briefly notice a few points (well explained in the article), because they furnish the key to the proper understanding of a subject, not altogether free from difficulty. What feudal tenure always implied was the duty and the right of jurisdiction of some kind; for local, or more exactly speaking personal, jus-

<sup>1</sup> Gildesford, where the burghers houses are called *hagæ*, a house belonging to the Bishop of Bayeux, apparently not geldable because it was part of the bishop's *manerium*, is called *domus*, and two others outside the burgh are styled *domus*.

<sup>2</sup> Cf. "Craigi Jus Feudale," the glossary, under each word.

<sup>3</sup> *Macmillan's Magazine* for April, 1890.

tice was as essential to feudal tenure as military service. Lordship and court jurisdiction were necessarily connected and inter-dependent. As I think I have shown elsewhere, there was an inclination on the part of the general body of freemen to neglect the attendance at the moots or courts; hence the result was, that private courts on the whole survived only where there was a sort of compact nucleus of local business and interest by which they could be maintained.

Such a nucleus was afforded by the complex structure known as the Manor.

What we find, then, from the Conquest downwards is, that an English manor included the lord, the free tenants, who held of the lord by regular feudal tenures, and owed suit to his court, and the villeins or customary tenants, who held land according to the custom of the manor in villenage or base tenure, being generally bound not only to make stated payments in kind, but to furnish work on the lord's own land at stated intervals.

Therefore the idea of a manor unaccompanied by private jurisdiction, as well in the early period of the Norman settlement as in the period just preceding it, is not warranted by the history of the institution. It was from this Normanized manorial system that the later notion of copyhold and copyhold tenures grew into life, and it was to the baser part of it, viz., to villenage, that it owes its position in the law of England. Copyhold tenure is in the main due to the negligence or the goodnature of the lords.

Formed at first by encroachment, afterwards ripened into property by tenure, and eventually recognised as a customary right, our English system of copyhold tenure is a remarkable instance of the influence of custom upon law, and the value of prescription as confirming and settling titles.<sup>1</sup>

I now proceed to notice the measurements of land spoken of in Domesday, not for the purpose of settling the controversy as to the exact amount of one of them, the "hide," but for the purpose of quoting from a very valuable old treatise a passage relating to this matter.

First I state the terms employed in Domesday, or at the time of that survey. These terms are "acra," "virgata," "hyd," or hide, and "carrucata."

The "acra," or acre,<sup>2</sup> was the unit. That seems (at least the Kentish acre was so) to have been from one-fourth to one-third more than the Roman jugerum. This, which was as much as an ox could plough in a day, was, according to Quintilian, two hundred and forty feet in

<sup>1</sup> For "manorium," and the duties of the steward and bailiff thereof, according to the custom and law of England at a later period of time than the Conquest, see Fleta (ch. 72 and 73), pp. 159-164.

<sup>2</sup> From the A.-S. "æcer" a field. The Norman acre evidently differed from the Saxon acre, as the Register of Battle Abbey shows, where a grant of land is spoken of thus: "Triginta acras prati ad mensuram Normannie dimensas in fundo manerii sui vocabulo Bodeham."—Thirty acres of meadow, according to the Norman scale of measurement, on the land of his manerium styled Bodeham.

length, and one hundred and twenty in breadth; so that the Domesday acre was about three hundred feet in length, and one hundred and fifty in breadth. The virgate (or compass of land) contained from twenty-four to thirty acres, probably thirty. The "hide," from the old word "hyden," to cover, originally meant not a measure but a family (Bede speaks of *familie*, i.e. hides); what its actual extent was is by no means free from doubt. According to Mr. Kemble it ranged from thirty to thirty-three acres. Sir H. Ellis thinks "it contained no certain number of acres." Mr. Morgan shows that it varied from sixty-four to three hundred and sixty acres, and Mr. Coote holds that "at all times it was a settled and defined quantity of land; for though the number of its acres varied, it expressed the same quantity." Mr. Pearson<sup>1</sup> has gone into the discussion with great care. His conclusions are: (1) That there were two hides, the first, Bede's, being probably of twenty-five to thirty acres; the second, that of later times, one hundred to one hundred and twenty acres. (2) That this extended measurement may be attributable to the growing tendency towards converting commonage in unenclosed lands into property. He quotes a passage from the Domesday in Kent, which seems certainly in point. It runs thus: "In the common land of St. Martin there are four hundred and a half acres, which make two and a half sowlings, or Kentish hides." This and other instances in Domesday would seem to indicate a measure of one hundred or one hundred and twenty acres.

In the old treatise I referred to a few lines back the matter is noticed, though briefly and without much explanation. That treatise is the "Dialogus de Scaccario," by Richard, Bishop of London, Treasurer of the Exchequer in the reign of Henry the Second.

This work, which appears to have been written about a century after the Domesday Inquest, is one of great value for the account it gives of many of our old institutions, and for the light it throws "upon every important point in the development of constitutional principles before the Great Charter."<sup>2</sup>

This is the passage in the "Dialogus," which I translate:—

I. xvii. *Concerning the Hide, the Hundred, and the County, according to the traditional talk of the country.*

"*The Teacher.*—This topic was more familiar to the country folk. According to their traditions the 'hide' in its primitive form consists of one hundred acres. The 'hundred' is made up of so many hundreds of hides, the exact quantity not being defined, for some hundreds contain more and some fewer hides. Hence you will find in the old special grants of the kings of England the hundred frequently spoken of as the centuriate. Following this plan; 'counties' are made up of hundreds, some more and some less, as the wise men of the time settled them."

<sup>1</sup> "History of England," vol. i., Appendix B., pp. 654-658.

<sup>2</sup> "Documents Illustrative of English History," by W. Stubbs, M.A., part iv. p. 160.

According to this authority, then, the measurement of the hide was in King Henry's day taken to be one hundred acres.

The term "*carrucata*" was introduced by the Normans, and in the opinion of a modern writer (Mr. Eyton) represented an estate which in point of value and capacity was closely analogous to the Saxon hide.

Mr. Eyton further maintains that the term as employed by the Normans meant the measurement of the ungeldable land (*quæ nunquam geldavit*).

Between Mr. Eyton and Mr. J. Horace Round, to whom I have before referred, there is a controversy on this point, viz. whether there is any connection between the "*carrucata terræ*" and the "*terra ad unam carrucam*."

Mr. Eyton holds that there is no such connection, and insists that the Norman surveyors applied it to land which had never been hidated, or whose hidation they could not fix or discover. Hence they used the term as an alternative for the Saxon hide.

Mr. Round dissents from this view, and maintains (1) that the *carrucata* was virtually the equivalent of the "*terra ad unam carrucam*"; (2) that whilst the hide is systematically opposed to the *terra ad unam carrucam* as measures calculated on different plans, the *carrucata* never is so opposed.

Without attempting to settle this controversy, I would draw attention to the fact that in the time of Edward the Second (see a deed of Thomas de Arden, 19 ed. 2), a *carrucate* or plough-land is declared to be one hundred acres, upon which a tribute was levied, called *Carvagium* or *Carucagium*; that Skene defines it thus, "as great a portion of land as may be tilled by one plough in a year and a day"; and that Littleton, in his chapters on "*Tenure in Socage*," says "*Soca idem est quod carrucata*." Soke and *carrucate* are all one. But then he may have been deceived by the word itself.

In the reign of Henry the Third the king took "*carvage*," that is, two marks of silver of every knight's fee, towards the marriage of his sister Isabella to the Emperor (Stow's *Annals*, p. 271).

To return, however, to the word as used in Domesday; this inference is noteworthy, that "*carrucate*," when it occurs in hidated districts, represents the name given by the Normans to a plough-land free from liability to geld;<sup>1</sup> and this I think may be taken to be the actual meaning of the word at that time.

I shall now advert to the subject of the current coins, the method of taking payments, and that of making up accounts known and applied at the time of the Domesday survey. I start with the following points.

1. All the moneys specified in Domesday (as was the fact also in Saxon times) are not to be understood as being current coins, money

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<sup>1</sup> See vol. i. of "*Domesday Studies*," published 1888. "*Danegeld and the Finance of Domesday*," by J. Horace Round, M.A. Also, for large information on the subject of the *Carrucate* and the *Bovate*, see in the same volume Canon Isaac Taylor's paper on "*The Plough-land and the Plough*."

in actual use, for many of those mentioned as being paid or rendered are only moneys of account, expressions for money used by way of computation.

2. That our modern acceptation of these moneys of account does not convey the true meaning of them in the days when the Normans first ruled the land.

The coins in actual use or currency, though of small value, were made of silver. They were the penny (called in Domesday "*denarius*," and in a few passages "*nummus*"), the halfpenny ("*obolus*,") the farthing ("*ferding*," or "*ferting*"), and the "*styca*." They were all Saxon coins, continuing in use for many years after the Conquest, for apparently no new money was made by others than the moneyers or minters of certain favoured towns until the year A.D. 1175, when Henry the Second seems to have struck new coins.

Besides the moneys above mentioned, a small copper coin, called "*minuta*" (or mite), is spoken of in Domesday (but only under one place, Cheshire). This is supposed to be identical with the copper coins in currency in the time of the Northumbrian kings, known as "*stycæ*," and worth about half a farthing.

All the moneys that were collected by the sheriffs and town reeves, whether on account of "*geld*," or "*gablum*," or of fines and penalties, were collected for and paid into the Treasury; that is, in Saxon days, into the "*Hoard*," to the hands of the "*Hordere*," or treasurer.<sup>1</sup>

It is very probable, as Mr. Green points out, that the later system of the Exchequer owes its origin to the necessity of providing proper machinery, not only for receiving the Danegeld and other sums levied by and paid to the sheriffs, but for giving formal acquittance thereof;<sup>2</sup> but of this I have spoken elsewhere. With reference to the collection of these rents and profits, taxes and fines, two things are clear.

One is, that the amounts to be got in and accounted for were large in quantity, and complicated in the matter of figures, throughout every county and town of England.

The other is, that the expression of these amounts in pennies, half-pennies, and farthings (though they were the coins actually received), would have caused infinite trouble both to those who had to levy and pay in, and those who had to receive. Hence, as a matter of economical arrangement, the plan of reckoning the levies and payments by moneys of account was a matter of necessity.

Therefore, instead of rendering the account of "*geld*," "*gable*," fine, and penalty in pennies, etc. only, the less troublesome process of doing so in pounds (*libræ*), ounces (*oræ*), and shillings (*solidi*), was resorted to.

When, then, we come across these expressions in Domesday, we must remember that they are expressions for moneys of account, terms of computation only, not actual coins, as with us. A pound

<sup>1</sup> Green's "*Conquest of England*," ch. x. p. 543.

<sup>2</sup> *Ibid.*, ch. x. p. 494, note.

meant a pound weight of pennies; an ounce (ora) and a shilling meant a fractional part of a pound; and in the case of the "ora," sometimes the weight used.

Now the pound (libra) had three qualifying terms applied to it, "libra ad numerum," "libra ad pensum," and "libra ad ignem et ad pensum."

The "libra ad numerum" was the pound weight of ready money (that is of pennies), reckoned not in shillings but in oræ, and was the expression for a pound weighing twelve oræ, of which every ora was to weigh twenty pennies.

Sometimes this form was expressed specifically, "libra ad numerum de xxi<sup>i</sup> in ora," sometimes simply "libra ad numerum," but in whichever form it was written, it always meant the same—a "pound weight of standard pennies, tested by oræ, each ora being equivalent in weight to twenty pennies.

The reason for this was that there were two oræ: one, the larger, equal in value to twenty pennies; the other, the smaller, equal to fifteen pennies.

The ora owes its introduction into England to the Danes, and with them it was merely a computation for money, and so it survived to Norman times, and in Domesday was not only the mode of accounting for the libra, but the weight used for ascertaining the proper amount of pennies required for that sum, it was the twelfth part of the nummularly pound.

The solidus, which represents the Saxon scilling or shilling, was also money of account, not coin in circulation. In Domesday it was reckoned as equivalent to twelve pennies, though its value in Saxon times seems to have been a good deal less.

Besides these moneys, there were other moneys of account, viz. the mark and the mancus. Both are of foreign origin. The mark, as a term of computation, was introduced by the Danes, and is spoken of in the treaty or agreement between Alfred and Guthrun. The mancus, so far as England is concerned, is a denomination of money imported from the Continent. Scarcely ever in circulation in our country, and only used as an expression for a sum equal in value to something like seven shillings, or it may be more.

Of the libræ there were, as I have said, two other kinds, the "libra ad pensum," or "pensata," and the "libra ad ignem et pensum," or "arsa et pensata." I add a few words of explanation as to them.

The libra "ad pensum," or "pensata," meant a pound of pennies (denarii), ascertained to be correct by their actual weight; that is, by placing a pound weight in one scale, and so many pennies as would be equal thereto in the other.

The libra "ad ignem et pensum," or "arsa et pensata," was used to signify that in addition to the test by weight that of fire had been resorted to.

These latter pennies, then, were coins not only weighed but refined. A few examples from Domesday will illustrate the matter I am now engaged upon.

Thus, for Dover we read that this city in Edward's time returned

as assessment to the geld eighteen pounds (libras). Of these pennies the king took two portions of one half, and the earl (Godwin), the other portion thereof. The second half went to the Canons of Saint Martin. For gablum or demesne rent, its Domesday assessment was forty pounds, though the king's reeve returned it at fifty-four. Of these the king took thirty-four pounds of pennies, reckoning twenty in the ora, and the earl thirty pounds ad numerum (also twenty in the ora).

In Canterbury the returns for gablum (demesne rent) payable by nineteen burgesses for sac and soc, for toll, and for other dues and rents, was assessed at fifty pounds, being one pound less than in Edward's time; but the receiver of the moneys made returns as for thirty pounds (arsas et pensatas), weighed and tested by fire, and twenty-four ad numerum; that is, reckoning twenty pennies in the ora. In addition to all this the sheriff had one hundred and ten shillings.

In Lewes, in addition to geld, gablum, and toll, each seller and buyer had to pay the reeve one penny (nummum). On the sale of an ox there was a charge of a halfpenny (obolum); of a slave, four pennies, in whatever part of the Rape the sale took place.

In addition to these payments fines were imposed for bloodshedding, adultery, rape, and for the recapture of a fugitive, in shillings and pennies, varying in amount. For calling in coin every moneyer had to pay twenty shillings. An extra charge of thirty-eight shillings was imposed on all the burghers of the burgh. In the Rape of Romsey the assessment for house tax was fixed at twenty-four pounds (of pennies), and for the privilege of coining new money one hundred and eighteen shillings was the charge.

In Worcester the Domesday inquest resulted in some important changes so far as customary exactions were concerned. For instance, an old charge in favour of London, and paid by the moneyers of Worcester in return for the badges or stamps used in their business, disappeared. And so did a special assessment on the city, divisible between the king (Edward) and earl (Edwin). Again, the demesne lands which had, prior to the inquest, belonged partly to the baron and partly to the earl, became king's land.

The old assessments under this head were altered, and the sheriff's return to King William's surveyors was twenty-three pounds and five shillings ad pensum (that is, by actual weight) for the king's lands, a general charge on the county of seventeen pounds ad pensum, and an additional charge of ten pounds of pennies (decem lib denariorum) of twenty pennies in the ora, or a hawk, together with a tax of one hundred shillings, of twenty pennies in the ora (ad numerum), for the queen's "gersuma,"<sup>1</sup> and for every sumpter horse, twenty shillings of twenty pennies in the ora. Those seventeen pounds ad pensum, together with sixteen pounds ad numerum, came from the suits heard in the County Courts, and from the hundreds; and for these sums the sheriff was personally answerable.

I will only add one more citation from Domesday, and that is Norwich Norwie).

<sup>1</sup> See note at next page.

Here again there were changes since Edward's time. At that period the town or vill made returns of twenty pounds (of pennies) to the king and ten to the earl. In addition to this it made return of twenty-one shillings, and four pennies for provender (prebendarios),<sup>1</sup> of six four-gallon measures of honey, one bear, and four dogs for the bear. The returns on the Domesday inquest were seventy pounds ad pensum to the king, and one hundred shillings ad numerum for the queen's "gersuma"; one palfrey, and twenty pounds of blanchéd or tested money (blancas) to the earl, and twenty shillings (ad numerum) for "gersuma." Instead of the old annual burgh rent of five pennies per head, charged against thirty-six French and six English burghers resident in the new burgh, the Domesday return was made in respect of forty-one French burghers, resident in the king's demesne; and in that of the earl the assessment stood at the same amount as before.

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<sup>1</sup> According to Ducange, "sub verbo," prebendarius is the same as provenarius. Prebendarius was also the old term for purveyor—"Ulward Prebendarius Regis." For further information about the queen's gersuma, also called "aurum reginæ," see the *Dialogus de Scaccario*, Lib. II., ch. xxvi., from which it appears that at the time when that work was published (the reign of Henry the Second) there was a special officer, called queen's clerk, whose duty it was to supervise this matter, and that to the writ of summons for sums due to the king these words were added, "and for the queen's money one mark of gold."

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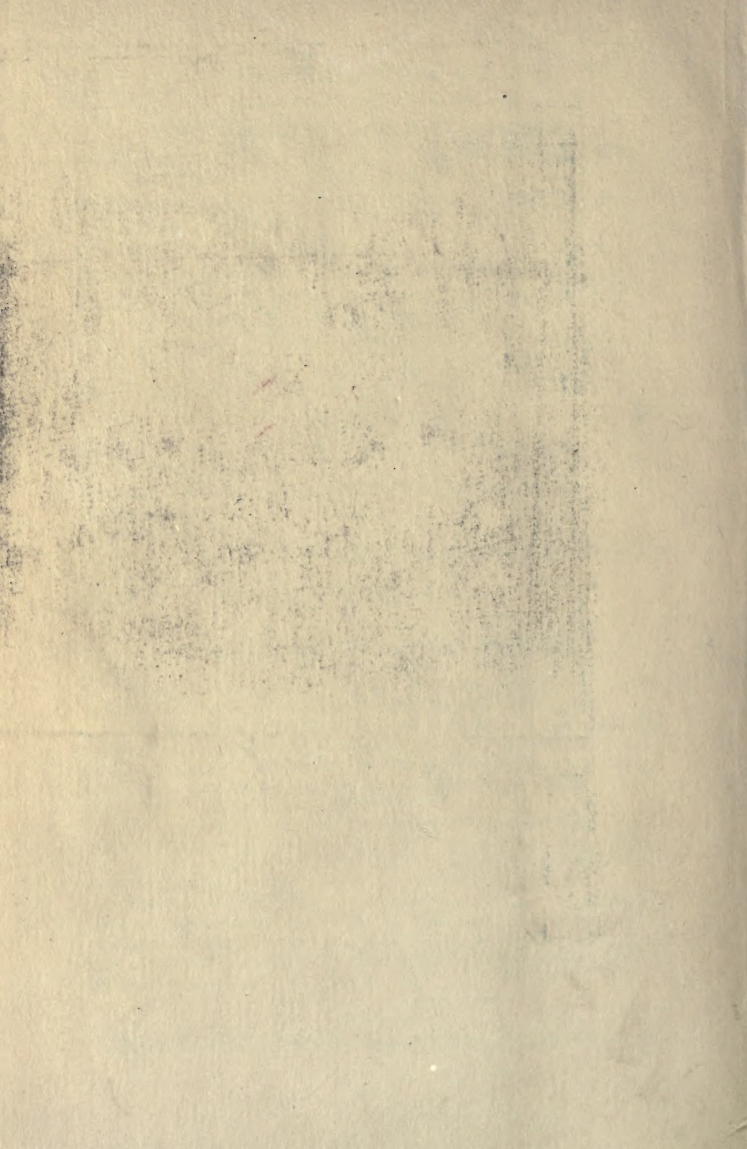
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